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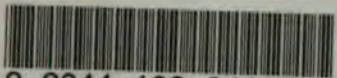
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*Report of the Neutrality Laws Commissioners*

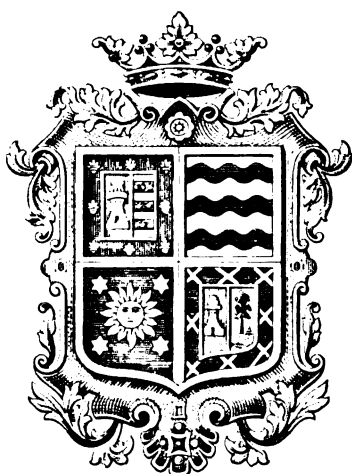
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REPORT

THE NEUTRALITY LAW COMMISSIONERS

OF THE UNITED STATES

REPORT OF THE COMMISSIONERS OF THE NEUTRALITY LAW

FOR THE YEAR 1900



Printed by the Government Printing Office, Washington, D.C.

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Great Britain. Neutrality laws commission, 1867-1868.

# REPORT

OF

## THE NEUTRALITY LAWS COMMISSIONERS;

TOGETHER WITH

### AN APPENDIX

CONTAINING

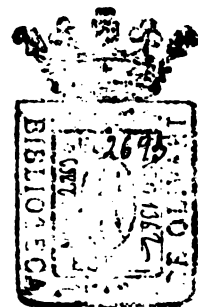
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REPORTS FROM FOREIGN STATES AND OTHER DOCUMENTS.

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Presented to both Houses of Parliament by Command of Her Majesty.

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LONDON:

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,  
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

FOR HER MAJESTY'S STATIONERY OFFICE.

1868.



## CONTENTS.

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	PAGE
COMMISSION - - - - -	3
REPORT - - - - -	5
REASONS GIVEN BY MR. VERNON HARCOURT FOR DISSENTING FROM CERTAIN PORTIONS OF THE REPORT- - -	7
APPENDIX :—	
I. British Foreign Enlistment Act - - - - -	13
II. United States Foreign Enlistment Act - - - - -	16
III. Historical Memorandum, by Mr. Abbott - - - - -	17
IV. Reports from Foreign States - - - - -	39
Proclamations, &c. issued by several Foreign States on breaking out of the Civil War in America - - - - -	69
V. British Proclamations of Neutrality - - - - -	72
VI. Regulations and Instructions published by Her Majesty's Government during the Civil War in America - - - - -	77
VII. Memorial from Liverpool Shipowners suggesting an alteration in the Foreign Enlistment Act - - - - -	79

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## COMMISSION.

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**Victoria**, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

**To** Our right trusty and well-beloved Councillor Robert Monsey Baron Cranworth, Our right trusty and well-beloved Richard Monckton Baron Houghton, Our right trusty and well-beloved Councillor Sir Hugh McCalmont Cairns, Knight, a Judge of the Court of Appeal in Chancery, Our right trusty and well-beloved Councillor Stephen Lushington, Doctor of Civil Law, Judge of the High Court of Admiralty, Our right trusty and well-beloved Councillor Sir William Erle, Knight, Our trusty and well-beloved Sir George William Wilshere Bramwell, Knight, one of the Barons of the Court of Exchequer, Our trusty and well-beloved Sir Robert Joseph Phillimore, Knight, Doctor of Civil Law, Our Advocate General, Our trusty and well-beloved Sir Roundell Palmer, Knight, Our trusty and well-beloved Travers Twiss, Doctor of Civil Law, Our trusty and well-beloved William George Granville Venables Vernon Harcourt, Esquire, one of Our Counsel learned in the Law, Our trusty and well-beloved Thomas Baring, Esquire, Our trusty and well-beloved William Henry Gregory, Esquire, and Our trusty and well-beloved William Edward Forster, Esquire, greeting.

**Whereas** We have deemed it expedient that a Commission should forthwith issue to inquire into and consider the character, working, and effect of the Laws of this Realm, available for the Enforcement of Neutrality during the existence of hostilities between other States with whom We are at peace; and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with our international obligations.

**Now know ye**, that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint you the said Robert Monsey Baron Cranworth, Richard Monckton Baron Houghton, Sir Hugh McCalmont Cairns, Stephen Lushington, Sir William Erle, Sir George William Wilshere Bramwell, Sir Robert Joseph Phillimore, Sir Roundell Palmer, Travers Twiss, William George Granville Venables Vernon Harcourt, Thomas Baring, William Henry Gregory, and William Edward Forster, to be Our Commissioners for the purposes aforesaid.

**And** for the better effecting the purposes of this Our Commission, We do by these presents give and grant to you, or any five or more of you, full power and authority to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission, and also to call for, have access to, and examine all such books, documents, registers, and records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

**And** We do by these presents will and ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any five or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We do further ordain that you, or any five or more of you, may have liberty to report your proceedings under this Commission from time to time, if you should judge it expedient so to do.

And Our further will and pleasure is that you do, with as little delay as possible, report to Us under your hands and seals, or under the hands and seals of any five or more of you, your opinion upon the several points herein submitted for your consideration.

And for your assistance in the due execution of this Our Commission, We, have made choice of Our trusty and well-beloved Francis Phipps Onslow, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose services and assistance We require you to use from time to time as occasion may require.

Given at Our Court at St. James's, the Thirtieth Day of January 1867, in the Thirtieth year of Our Reign.

By Her Majesty's command.

S. H. WALPOLE.

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# REPORT.

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## TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed "to inquire into and consider the character, working, and effect of the laws of this realm available for the enforcement of neutrality during the existence of hostilities between other States with whom Your Majesty is at peace, and to inquire and report whether any and what changes ought to be made in such laws for the purpose of giving to them increased efficiency and bringing them into full conformity with Your Majesty's international obligations," have now to state to Your Majesty that we have held twenty-four meetings, and having inquired into and considered the subject so referred to us, have agreed to the following Report:—

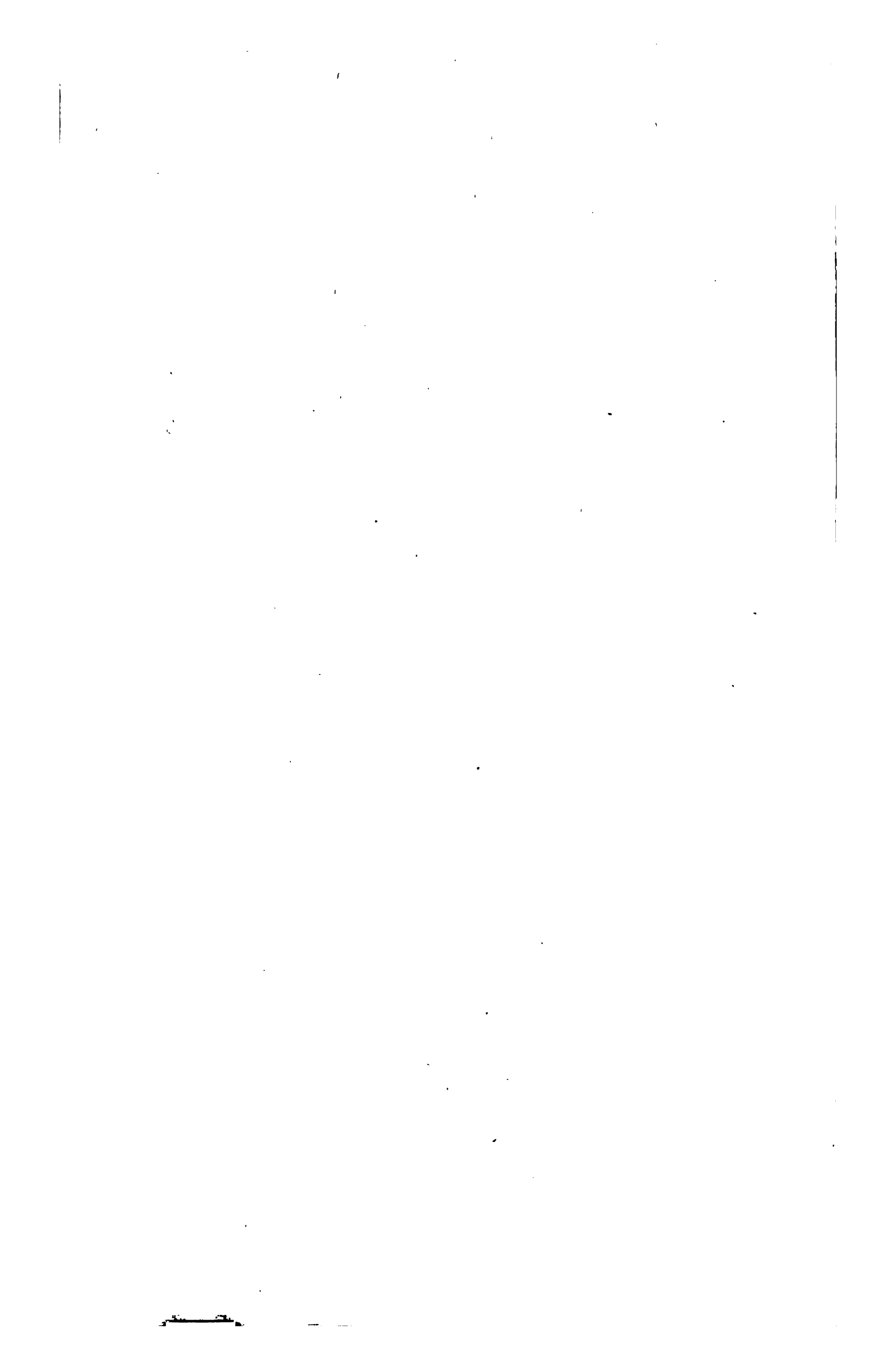
The Statute now available for the enforcement of neutrality during the existence of hostilities between States with whom Your Majesty is at peace is the 59 Geo. III. c. 69, commonly called the "Foreign Enlistment Act." The title of that Act is "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's licence." And the preamble runs thus: "Whereas the enlistment or engagement of His Majesty's subjects to serve in war in foreign service without His Majesty's licence, and the fitting out and equipping and arming of vessels by His Majesty's subjects without His Majesty's licence for warlike operations in or against the dominions or territories of any foreign Prince, state, potentate, or persons exercising or assuming to exercise the powers of Government in or over any foreign country, colony, province, or part of any province, or against the ships, goods, or merchandise of any foreign Prince, state, potentate, or persons as aforesaid, or other subjects, may be prejudicial to and tend to endanger the peace and welfare of this kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same."

This, then, being the Statute directly available in this country for the enforcement of neutrality, our duty has been to inquire and report whether it is susceptible of any and what amendments, and we are of opinion that it might be made more efficient by the enactment of provisions founded upon the following resolutions:—

- I. That it is expedient to amend the Foreign Enlistment Act by adding to its provisions a prohibition against the preparing or fitting out in any part of Her Majesty's dominions of any naval or military expedition to proceed from thence against the territory or dominions of any foreign state with whom Her Majesty shall not then be at war.
- II. That the first paragraph of sect. 7 of the Foreign Enlistment Act should be amended to the following effect:—

If any person shall within the limits of Her Majesty's dominions—

- (a.) Fit out, arm, dispatch, or cause to be dispatched, any ship with intent or knowledge that the same shall or will be employed in the military or naval service of any foreign power in any war then being waged by such power against the subjects or property of any foreign belligerent power with whom Her Majesty shall not then be at war:
- (b.) Or shall within Her Majesty's dominions build or equip any ship with the intent that the same shall, after being fitted out and armed either within or beyond Her Majesty's dominions, be employed as aforesaid:
- (c.) Or shall commence or attempt to do, or shall aid in doing, any of the acts aforesaid, every person so offending shall be deemed guilty of a misdemeanor.



1871

THE DEPARTMENT OF THE INTERIOR

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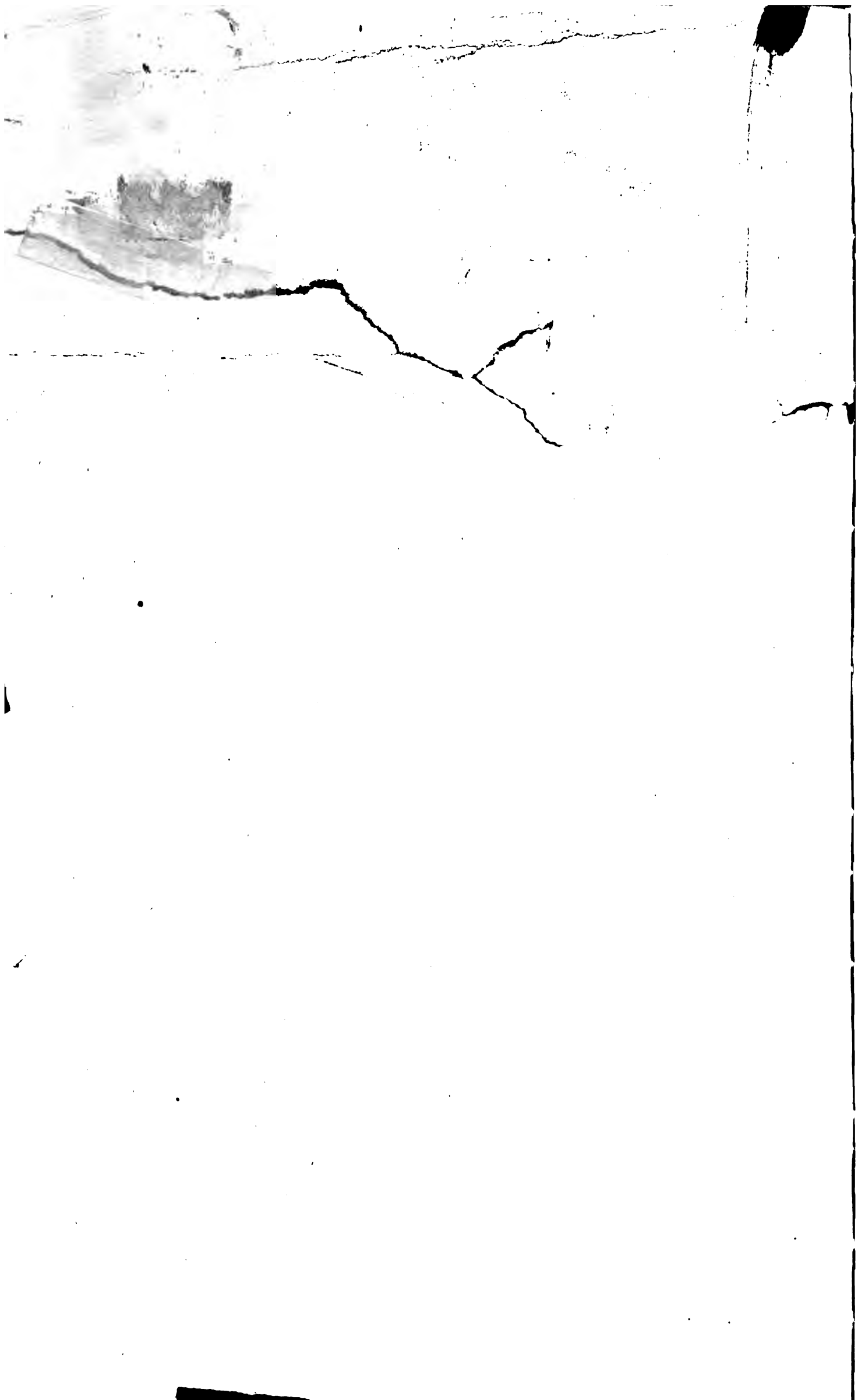
REPORT OF THE GEOLOGICAL SURVEY

OF THE TERRITORY OF ARIZONA



WASHINGTON: GOVERNMENT PRINTING OFFICE: 1871

161







to confer these extended powers, a large discretion is left to the Government to determine how far they shall be put in operation. But as a fact, this discretion will be more nominal than real; and with the view of precluding international complaints, it will be absolutely null. Whatever power is conferred, in effect creates an obligation on the part of the Government to put it in force, and a responsibility on the part of the nation if any neglect to enforce it should occur. If the Government are authorized to interfere by prosecution and seizure at all stages of the building, then, at the first suggestion of any belligerent power they will be compelled, almost without discretion, to interfere, because, should they decline to do so, their responsibility and that of the nation will be involved, even by an error of judgment, in a case where the obligation is admitted. Thus we shall be made liable for acts for which at present no nation would hold us responsible. The reason why it has been considered inexpedient and impossible to enforce a prohibition of the exportation of munitions of war from the neutral territory is because to do so would involve a system of repression and *espionage* on the part of the neutral Government which would be wholly intolerable to the trade of its subjects. If the thing is forbidden it is the duty of the neutral Government to see that the prohibition is in fact enforced. But in order to enforce it we must establish on every occasion of war in foreign countries a sort of belligerent excise in the bosom of our own people. And this is precisely the evil in which we shall involve ourselves by undertaking to prohibit "building" with an unlawful intent. If we create and assume this duty we are bound to execute it, and in order to execute it we must ascertain at our own peril the intent and the future destination of every keel laid in the United Kingdom and even in our most distant possessions. If this is done honestly and efficiently it will place the whole ship-building trade under a supervision of a most odious and oppressive description, which would hardly be endured even for the security of our own interests, and certainly will not be tolerated for the advantage of foreign States.

There are those who reconcile themselves to such a course by supposing that in fact this new crime would never practically be prosecuted in its early stage. If so then to what purpose is it created? But in fact if it is made a crime the neutral Government must proceed against it in its earliest inception at the risk of being held responsible for what may happen in its further progress. There is an immense difference in this respect between the offence of arming and fitting out, which, especially in modern warfare, is a fact sufficiently obvious and patent, and may be easily detected in time to prevent the despatch of the vessel. But if all building with a certain intent is to be constituted a crime which it is part of the duty of the Government to repress, then there is not a keel laid, a bolt driven, or plank sawn in any yard in the country which may not at every instant be exposing the nation to a responsibility hitherto unknown.

The objections which forcibly strike me are these:—

- (1.) We shall create a new duty which it will be difficult and probably impossible to execute.
- (2.) In creating such a duty we shall incur a new responsibility by its non-execution.
- (3.) The attempt to execute it will be odious to our own subjects, and the failure to execute it will be a just ground of complaint to foreign states.
- (4.) We shall be placing the trade of our own country at an uncalled for disadvantage as compared with that of the rest of the world.

Either the creation of this new offence will or will not tend to embarrass and injure the ship-building trade of the country. If it will not (as some believe), it would be satisfactory that this should be clearly established. I confess if I were satisfied of this, my objections to the course proposed would be in a great measure removed. But if, as I believe, the necessity of a perpetual official supervision and interference would greatly hamper, and probably ultimately destroy, this branch of our commerce, that again is a point on which I think the nation has a right to expect that we should afford them the means of forming a sound judgment. It may be that for adequate objects we should be willing to sacrifice such a trade. But it is well that we should estimate the amount of the sacrifice, being as it is wholly gratuitous and without example in the case of other nations. I regret that the Commission have not taken evidence to show how far the proposed prohibition would in fact affect this particular trade and the general naval resources of the country. I venture to think that before any legislation on this matter is attempted, such an inquiry should be instituted. If the preventive powers of detention recommended in the Report are (as I believe) sufficient for all practical purposes and the performance of all legitimate duties, every argument of policy would dissuade us from carrying the law any further.

I entirely share the desire to make abundant provision that the duties of neutrality should be honestly, fully, and effectually carried out. But in creating new duties, which

do not at present exist, either in principle, precedent, or practice, it is worth while to consider whether by exaggerating the obligations of neutrality we are not creating a discouragement to its practice. We may end by making the duties of neutrality so irksome and intolerable, that on a mere calculation of expediency a prudent Government would prefer to go to war. And thus we may defeat the end we have in view by the means we adopt to attain it.

There is one condition of things for which it seems especially necessary to make provision. A contract may be made by a foreign government for the building in this country of an iron-clad in time of peace and without any contemplation of present war. Such vessels require many months for completion and their cost is enormous. The foreign government may have paid several hundred thousand pounds by instalments during the construction of the vessel, and the property in the incomplete vessel will have passed to the foreign government. What is to be done to such a vessel in case the contracting government is involved subsequently in war? Is the vessel to be forfeited and the builder to be prosecuted because he proceeds with a contract which was perfectly lawful when it was made? If so, what chance is there for the future that any foreign government will ever build in England, or indeed that any English builder will venture to undertake their contracts? This singular state of things might easily arise. The recent war between Austria and Prussia lasted less than two months; a vessel might have been contracted for by one of those governments with an English shipbuilder; the vessel might have been half finished before the war, and wholly completed after the war; in respect of the work done before the war and after the war, *i.e.* for the beginning and ending of the ship, the shipbuilder would be innocent; but in respect of the work done during the few weeks of the war, *i.e.* for the middle of the ship, he would be guilty of a misdemeanor and subject to fine and imprisonment. This may seem an extreme illustration, but it shows the necessity of providing some protection for contracts *bond fide* made and commenced in time of peace, unless it is intended wholly to prohibit the trade.

There is one other matter which I should gladly have seen embodied in the recommendations of the Report. A strong feeling has recently grown up against the recognition of belligerent commissions granted to vessels on the high seas, by which such vessels become at once raised to the position of lawful belligerent cruisers, though they start from no belligerent port, and, in fact, derive no support from the natural and legitimate naval resources of those on whose behalf they wage war. It seems to me that for all reasons it is wise to discourage such a practice. As there is no rule of international law which forbids such delivering of commissions on the high seas, we cannot of course refuse to recognize the title of such a cruiser to all the legitimate rights of war in places beyond our jurisdiction. But we are masters of our own actions and our own hospitality within the realm. Though, therefore, we cannot dispute the validity of such a commission on the high seas, or the legality of captures made by such a vessel, we may refuse to admit into our ports any vessel which has not received its commission in a port of its own country. By so doing we should be acting strictly within the principles of the law of nations, and our example would very probably be followed by other maritime states, and thus in the end tend to repress the practice altogether. For this purpose I should have been very glad if the commission had thought fit to recommend that in time of war no armed vessel engaged in hostilities should be admitted into any of our ports which should not hold a commission delivered to it in some port of military or naval equipment actually in the occupation of the government by which she is commissioned.

W. V. HARCOURT.

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## APPENDIX.

## APPENDIX No. I.

## BRITISH FOREIGN ENLISTMENT ACT.

59 George III. Cap. 69, July 3, 1819.

CAP. LXIX.—*An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the Fitting-out or Equipping, in His Majesty's Dominions, Vessels for Warlike Purposes, without His Majesty's Licence.*

WHEREAS the enlistment or engagement of His Majesty's subjects to serve in war in foreign service, without His Majesty's licence, and the fitting-out and equipping and arming of vessels by His Majesty's subjects, without His Majesty's licence, for warlike operations in or against the dominions or territories of any foreign Prince, State, Potentate, or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province, or against the ships, goods, or merchandise of any foreign Prince, State, Potentate, or persons as aforesaid, or their subjects, may be prejudicial to and tend to endanger the peace and welfare of this Kingdom: And whereas the laws in force are not sufficiently effectual for preventing the same; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, an Act passed in the ninth year of the reign of His late Majesty King George the Second, intituled "An Act to prevent the listing His Majesty's subjects to serve as soldiers without His Majesty's licence;" and also an Act passed in the twenty-ninth year of the reign of His said late Majesty King George the Second, intituled "An Act to prevent His Majesty's subjects from serving as officers under the French King, and for better enforcing an Act passed in the ninth year of His present Majesty's reign to prevent the enlisting His Majesty's subjects to serve as soldiers without His Majesty's licence; and for obliging such of His Majesty's subjects as shall accept Commissions in the Scotch Brigade in the service of the States-General of the United Provinces, to take the oaths of allegiance and abjuration," and also an Act passed in Ireland in the eleventh year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing the enlisting of His Majesty's subjects to serve as soldiers in foreign service without His Majesty's licence;" and also an Act passed in Ireland in the nineteenth year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing His Majesty's subjects from entering into foreign service, and for publishing an Act of the seventh year of King William the Third, intituled 'An Act to prevent Foreign Education,'" and all and every the clauses and provisions in the said several Acts contained, shall be and the same are hereby repealed.

II. And be it further declared and enacted, that if any natural-born subject of His Majesty, His heirs and successors, without the leave or licence of His Majesty, His heirs or successors, for that purpose first had and obtained under the sign-manual of His Majesty, His heirs or successors, or signified by Order in Council, or by proclamation of His Majesty, His heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the

service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board of any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign Power, Prince, State, Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people; or if any natural-born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign State, Country, Colony, Province, or part of any Province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any Province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any country, Colony, Settlement, island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under and in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of Government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

III. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to render any person or persons

liable to any punishment or penalty under this Act, who at any time before the first day of August one thousand eight hundred and nineteen, within any part of the United Kingdom, or of the Islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November one thousand eight hundred and nineteen, in any part or place out of the United Kingdom, or of the said Islands, shall have taken or accepted, or agreed to take or accept any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a soldier, or shall have served, or having so served, shall, after the said first day of August one thousand eight hundred and nineteen, continue to serve in any warlike or military operation either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or or having so served shall, after the said first day of August, continue to serve in and on board of any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said first day of August, continue in any foreign State, country, Colony, Province, or part of a Province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this Act, after the said first day of August, or shall embark or proceed from some port or place out of the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said first day of November, or who shall, before the passing of this Act, and within the said United Kingdom, or the said Islands, on or before the first day of November one thousand eight hundred and nineteen, in any port or place out of the said United Kingdom, or the said Islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed contrary to the prohibitions respectively in this Act contained, anything in this Act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this Act, and as such person or persons would have been in, and been liable and subject to, in case this Act and the said recited Acts by this Act repealed had not been passed or made.

IV. And be it further enacted, that it shall and may be lawful for any Justice of the Peace residing at or near to any port or place within the United Kingdom of Great Britain and Ireland, where any offence made punishable by this Act as a misdemeanour shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any Justice of the Peace; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satis-

faction of the said Justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and that all such offences which shall be committed within that part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and that all such offences which shall be committed within that part of the United Kingdom called Ireland, shall and may be prosecuted in His Majesty's Court of King's Bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and all such offences as shall be committed in Scotland shall and may be prosecuted in the Court of Justiciary in Scotland, or any other Court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this Act as a misdemeanour shall be committed out of the said United Kingdom, it shall be lawful for any Justice of the Peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such Justice, or any other Justice of the Peace for such place; and it shall be lawful for the Justice of the Peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the Superior Court, competent to try and having jurisdiction to try criminal offences committed in such port or place; and all such offences committed at any place out of the said United Kingdom shall and may be prosecuted and tried in any Superior Court of His Majesty's dominions competent to try and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

V. And be it further enacted, that in case any ship or vessel, in any port or place within His Majesty's dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign Prince, State, or Potentate, Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign Colony, Province, or part of any Province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this Act, it shall be lawful for any of the principal officers of His Majesty's Customs where any such officer of the Customs shall be, and in any part of His Majesty's dominions in which there are no officers of His Majesty's Customs, for any Governor, or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: Provided nevertheless, that no principal officer, Governor, or person shall act as aforesaid upon such information upon oath as aforesaid unless the party so informing shall not only have deposed in such information that the person or persons on board

such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged, or agreed, or been procured to enlist, or enter, or serve, or is or are departing as aforesaid for the purpose and with the intent of enlisting, or entering to serve, or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information, upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury.

VI. And be it further enacted, that if any master, or other person having or taking the charge or command of any ship or vessel, in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged, or agreed, or been procured to enlist, or enter, or serve, or who shall be departing from His Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this Act, such master, or owner, or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person so taken or engaged to be taken on board; and, moreover, every such ship or vessel so having on board, conveying, carrying, or transporting any such person or persons, shall and may be seized and detained by the Collector, Comptroller, Surveyor, or other officer of the Customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient bail, by recognizance before one of His Majesty's Justices of the Peace, for the payment of such penalty or penalties.

VII. And be it further enacted, that if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State, or Potentate, or of any foreign Colony, Province, or part of any Province or people, or of any person or persons exercising or assuming to exercise any powers of Government in or over any foreign State, Colony, Province, or part of any Province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province, or part of any Province or country, or against the inhabitants of any foreign Colony, Province, or part of any Province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which

such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's navy are empowered respectively to make seizures under the laws of Customs and Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned, for any breach of the laws made for the protection of the revenues of Customs and Excise, or of the laws of trade and navigation.

VIII. And be it further enacted, that if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel which at the time of her arrival in any part of the United Kingdom or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign Prince, State, or Potentate, or of any person or person exercising or assuming to exercise any powers of Government in or over any Colony, Province, or part of any Province or people belonging to the subjects of any such Prince, State, or Potentate, or to the inhabitants of any Colony, Province, or part of any Province or country under the control of any person or persons so exercising or assuming to exercise the powers of Government, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted.

IX. And be it further enacted, that offences made punishable by the provisions of this Act, committed out of the United Kingdom, may be prosecuted and tried in His Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, in the county of Middlesex.

X. And be it further enacted, that any penalty or forfeiture inflicted by this Act may be prosecuted, sued for, and recovered, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of His Majesty's Attorney-General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any person or persons whatsoever; wherein no essoin, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this Act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this Act shall go and be applied to His Majesty, his heirs or successors, and the other



moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

XI. And be it further enacted, that if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for any thing done in pursuance of this Act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by any officer of Customs or Excise, or by any officer of His Majesty's navy, under any Act of Parliament in force on or immediately before the passing of this Act, for the protection of the revenues of Customs and Excise, or prevention of smuggling, shall apply and be in full

force in any such action or suit as shall be brought for anything done in pursuance of this Act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this Act.

XII. Provided always, and be it further enacted that nothing in this Act contained shall extend, or be construed to extend, to subject to any penalty any person who shall enter into the military service of any Prince, State, or Potentate in Asia, with leave or licence, signified in the usual manner, from the Governor-General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such Governor-General or Vice-President in Council.

## APPENDIX No. II.

### UNITED STATES FOREIGN ENLISTMENT ACT.

Fifteenth Congress. Sess. 1, ch. 8, April 20, 1818.

CHAP. LXXXVIII.—*An Act in addition to the "Act for the Punishment of certain Crimes against the United States," and to repeal the Acts therein mentioned.\**

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign Prince, State, Colony, district, or people, in war, by land or by sea, against any Prince, State, Colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years.

Sect. 2. And be it further enacted, That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign Prince, State, Colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: Provided, that this Act shall not be construed to extend to any subject or citizen of any foreign Prince, State, Colony, district, or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States, was fitted and equipped as such, enter and enlist himself, or hire or retain another subject or citizen of the same foreign Prince, State, Colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign Prince, State, Colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign Prince, State, Colony, district, or people.

Sect. 3. And be it further enacted, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign Prince or State, or of any Colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any Colony, district, or people with whom the United States are at peace, or shall issue or deliver a

commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanour, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Sect. 4. And be it further enacted, That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such persons so offending shall be deemed guilty of a high misdemeanour, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offence, if committed within the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Sect. 5. And be it further enacted, That if any persons shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign Prince or State, or of any Colony, district, or people, or belonging to the subjects or citizens of any such Prince or State, Colony, district, or people, the same being at war with any foreign Prince or State, or of any Colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger calibre, or by the addition thereto of any equipment solely applicable to war, every person so offending shall be deemed guilty of a high misdemeanour, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

Sect. 6. And be it further enacted, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace, every person so offending

\* "An Act for the Punishment of certain Crimes against the United States," April 30, 1790, ch. 9. Act of March 3, 1817, ch. 58.

shall be deemed guilty of a high misdemeanour, and shall be fined not exceeding three thousand dollars, and be imprisoned not more than one year.

Sect. 7. And be it further enacted, That the District Courts shall take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof.

Sect. 8. And be it further enacted, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this Act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States as before defined, and in every case in which any process issuing out of any Court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign Prince or State, or of any Colony, district, or people, or of any subjects or citizens of any foreign Prince or State, or of any Colony, district, or people, in every case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this Act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

Sect. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which by the law of nations or the Treaties of the United States, they ought not to remain within the United States.

Sect. 10. And be it further enacted, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or

in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

Sect. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign State, or of any Colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this Act.

Sect. 12. And be it further enacted, That the Act passed on the fifth day of June One thousand seven hundred and ninety-four, entitled "An Act in addition to the Act for the punishment of certain crimes against the United States," continued in force, for a limited time, by the Act of the second of March One thousand seven hundred and ninety-seven, and perpetuated by the Act passed on the twenty-fourth of April One thousand eight hundred, and the Act passed on the fourteenth day of June One thousand seven hundred and ninety-seven, entitled "An Act to prevent citizens of the United States from privateering against nations in amity with, or against the citizens of, the United States," and the Act passed the third day of March One thousand eight hundred and seventeen, entitled "An Act more effectually to preserve the neutral relations of the United States," be, and the same are hereby severally repealed: Provided nevertheless, that persons having heretofore offended against any of the Acts aforesaid may be prosecuted, convicted, and punished as if the same were not repealed; and no forfeiture heretofore incurred by a violation of any of the Acts aforesaid shall be affected by such repeal.

Sect. 13. And be it further enacted, That nothing in the foregoing Act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by the laws of the United States.

### APPENDIX No. III.

#### MEMORANDUM BY MR. ABBOTT.

##### THE FOREIGN ENLISTMENT ACT. (59 Geo. III., c. 69, July 3, 1819.)

The Foreign Enlistment Acts of Great Britain and the United States, the circumstances under which they were passed, as well as the principles of neutrality involved in them, are so similar that a consideration of the British must necessarily be prefaced by an account of the history of the American Act.\*

##### THE UNITED STATES FOREIGN ENLISTMENT ACT.

When, after the execution of Louis the XVIth, the French National Convention declared war, on the 1st of February 1793, against England and Holland, one of their first acts was to appoint a Representative to proceed to the United States to solicit the support of the sister Republic, and to reclaim the privileges to which they considered France to be entitled under the two Treaties of the 6th of February 1778.†

The first of those Treaties was a Treaty of Friendship and Commerce, and contained the following Articles:—

"Article XVII. Les vaisseaux de guerre de Sa Majesté Très Chrétienne et ceux des Etats-Unis, de

même que ceux que leurs sujets auront armés en guerre, pourront en toute liberté conduire où bon leur semblera, les prises qu'ils auront faites sur les ennemis, sans être obligés à aucuns droits, soit des Srs. Amiraux ou de l'Amirauté ou d'aucuns autres, sans qu'aussi les dits vaisseaux ou les dites prises, entrant dans les havres ou ports de Sa Majesté Très Chrétienne ou des Etats-Unis puissent être arrêtés ou saisis, ni que les officiers des lieux puissent prendre connaissance de la validité des dites prises, lesquelles pourront sortir et être conduites franchement et en toute liberté aux lieux portés par les commissions dont les Capitaines des dits vaisseaux seront obligés de faire apparoir; et au contraire ne sera donné asyle ni retraite dans leurs ports ou havres, à ceux qui auront fait des prises sur les sujets de Sa Majesté ou des Etats-Unis, et s'ils sont forcés d'y entrer par tempête ou péril de la mer, on les fera sortir le plutôt qu'il sera possible."

"Article XXII. Il ne sera permis à aucun corsaire étranger, non appartenant à quelque sujet de Sa Majesté Très Chrétienne ou à un citoyen des dits Etats-Unis, lequel aura une commission de la part

\* Fifteenth Congress, sess. 1, chap. 8, April 20, 1818.

† Signed by Benjamin Franklin.



d'un Prince ou d'une Puissance en guerre avec l'une des deux nations, d'armer leurs vaisseaux dans les ports de l'une des deux parties, ni d'y vendre les prises qu'il aura faites, ni décharger en autre manière quelconque les vaisseaux, marchandises, ou aucune partie de leur cargaison. Il ne sera même pas permis d'acheter d'autres vivres que ceux qui lui seront nécessaires pour se rendre dans le port le plus voisin du Prince ou de l'Etat dont il tient commission."

The other Treaty, styled "Traité d'Alliance Eventuelle et Défensive," provided (Article XI.) for the mutual guarantee of the French and United States possessions in North America, "le tout comme la possession sera fixée et assurée aux dits Etats, au moment de la cessation de la guerre qu'ils ont actuellement contre l'Angleterre;" and Article XII: "A l'effet de fixer plus précisément la sens et l'application de l'Article précédent, les Parties Contractantes déclarent que, dans le cas d'une rupture entre la France et l'Angleterre, la garantie réciproque stipulée dans le dit Article sortira son plein et entier effet, dès le moment qu'une telle guerre viendra à éclater. Et si une telle rupture n'a pas lieu les obligations mutuelles des dites garanties ne commenceront pas avant le moment que la cessation de la présente guerre entre les Etats-Unis et l'Angleterre aura fixé ces possessions d'une manière certaine."

The National Convention assumed that under these stipulations they might claim the exclusive right to arm and commission privateers within American ports, to bring into them their prizes, to cause the prizes thus brought in to be condemned by French Consuls and sold, and even to capture enemy's vessels within the limits of the maritime jurisdiction of the United States. At least such were the pretensions of their Envoy, Monsieur, or as he styled himself Citizen, Genet, a Girondist of the most exaggerated type, whose avowed object was to excite the people of the United States to a war with Great Britain.

On the other hand, Washington, then entering on his second term of office as President, was determined to preserve the neutrality of his country, and immediately on receiving intelligence of the outbreak of war hastened from Mount Vernon to Philadelphia, and summoned his Cabinet to consider:—

1. Whether a Proclamation of Neutrality should be issued.
2. Whether a minister should be received from the party then in power in France.
3. Whether the United States were bound by the guarantee in the Treaty of 1778.

The Cabinet differed on the second and third points, but were unanimous in the favour of the issue of a Proclamation.

On referring to the history of the United States for this period, it will be seen that the President was placed in a position which made it very difficult for him to carry out the policy of neutrality which he had decided upon.

The sympathies of the people of the United States were warmly engaged on behalf of France. The hostility against England generated during the War of Independence was kept alive and fostered by the excesses committed by the frontier Indians, who, it was alleged, were encouraged by the British authorities; disputes had been raised as to the interpretation of the Treaty of 1783; American seamen were pressed for the British navy; the English Government were said to exercise the right of search at sea, and to interfere with American merchant-vessels in an arbitrary and unfriendly manner. Besides the difficulties arising from these and other similar complaints against the British Government, which rendered any measure which might be supposed to be favourable to England in the highest degree unpopular, the Cabinet of the President was divided into factions headed respectively by Thomas Jefferson, Secretary for Foreign Affairs, and Alexander Hamilton, Secretary of the Treasury. The former, who had served from

1782 to 1789 as Minister at Paris, was at the head of the party who advocated the rights of separate Government in the several States. He was a Republican of extreme views, and favoured the French cause. The latter, the leader of the Federal or Centralization party, was inclined towards the constitutional system of England, with which country he consequently in some degree sympathized.

It is necessary to take some notice of these obstacles to the President's policy of neutrality, as explaining the subsequent proceedings of the United States Government. The nation at large and two of the Cabinet, Jefferson and the Attorney-General, Edmund Randolph, were for affording assistance to France in the first instance, and even for engaging eventually in the war. Washington, with Hamilton and Henry Knox, the Secretary for War, advocated a strict neutrality, and were supported in their views by the Federalist party. Washington's strength of character overcame the opposition of the French party, and he succeeded in commencing and maintaining that policy of non-intervention in European affairs which has since been consistently followed by his country up to the present time.

The Proclamation of Neutrality was issued on the 22nd of April 1793, and was as follows:

American State Papers vol. i, page 140.

"Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, on the one part, and France on the other part; and the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent Powers:

"I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively, and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever which may in any manner tend to contravene such disposition.

"And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs to cause prosecutions to be instituted against all persons who shall, within the cognizance of the Courts of the United States, violate the law of nations with respect to the Powers at war, or any of them.

(Signed) "WASHINGTON.

"Philadelphia, April 22, 1793.

"By the President,

(Signed) "TH. JEFFERSON."

In the meanwhile, M. Genet had sailed from France provided with blank commissions or letters of marque for distribution in the ports of the United States. He arrived at Charleston on the 8th of April; but the intelligence of his landing was not received by the United States Government at Philadelphia until the day on which the Proclamation was issued. He at once organized a system of privateering, and within a week commissioned four vessels, the "Republican," the "Sans Culotte," the "Anti-George," and the "Citizen Genet." He also authorized the French Consuls in the United States to hold Courts of Vice-Admiralty on any vessels their cruisers might capture, to condemn them and sell the prizes. Instead of proceeding by sea to Philadelphia, M. Genet made a triumphant progress by land, haranguing the people, instituting "bonnet rouge" clubs, and endeavouring to excite the citizens of the towns through which he passed to afford active aid to the French Republic, in spite of the President's declaration of neutrality.

Mr. Hammond lost no time in remonstrating against these proceedings, and on the 8th of May addressed the following note to Mr. Jefferson.

Mr. Jefferson to Mr. Morris, United States Minister at Paris August 16, 1793. American State Papers vol. i, p. 157.

Tucker, vol. i, p. 59.

Tucker's "History of the United States," Ep 1856, vol. i, pages 504 to 517

Tucker's "History of the United States," Guizot, Washington.

MS. Inclosure in Mr. Hammond's despatch to Lord Green-ville, May 17 1793.

"The undersigned, Her Britannic Majesty's Minister Plenipotentiary to the United States of America, has the honour of informing the Secretary of State that he has received intelligence from His Majesty's Consul at Charlestown, South Carolina, that two privateers have been fitted out from that port under French commissions. They carry six small guns, and are navigated by 40 or 50 men, who are for the most part citizens of the United States. One of these privateers left the harbour of Charlestown on the 18th ultimo, and the other was on the 22nd ultimo ready to depart.

"The undersigned does not deem it necessary to enter into any reasoning upon these facts, as he conceives them to be breaches of that neutrality which the United States profess to observe, and direct contraventions of the Proclamation which the President issued upon the 22nd of last month. Under this impression he doubts not that the Executive Government of the United States will pursue such measures as to its wisdom may appear the best calculated for repressing such practices in future and for restoring to their rightful owners any captures which these particular privateers may attempt to bring into any of the ports of the United States."

Mr. Jefferson to Mr. Hammond, May 15, 1805.

Mr. Hammond at the same time forwarded to Mr. Jefferson three other notes complaining respectively of the illegal prize court established by the French Consul at Charleston, of the intended shipment of arms and munitions of war for France from American Ports, and of the seizure of the British Barque "Grange" by the French frigate "Abondance" in the Delaware River.

Jefferson's Works, vol. iii, p. 557.

In acknowledging the receipt of these communications, Mr. Jefferson observed, with reference to the export of arms, that "American citizens have always been free to make, vend, and export arms; it is the constant occupation and livelihood of some of them; to suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries in which we have no concern, would scarcely be expected; it would be hard in principle and impossible in practice; the law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement of their occupations; it is satisfied with the external penalty pronounced in the President's Proclamation, that of confiscation of such portion of those arms as shall fall into the hands of any of the belligerent powers on the way to the ports of their enemies; to this penalty American citizens are warned that they will be abandoned, and that even private contraventions may work no inequality between the parties at war, the benefit of them will be left equally free and open to all."

"Mr. Jefferson also declared that the United States Government 'condemned in the highest degree the conduct of any of its citizens who might personally engage in committing hostilities at sea against any of the nations who were parties to the war, and that it would exert all the means with which the laws and Constitution armed them to discover such as offended therein, and would bring them to condign punishment,' and that 'the practice of commissioning, equipping, and manning vessels in American ports to cruise on any of the belligerent parties was equally and entirely disapproved, and that the Government would take effectual measures to prevent a repetition of it.'" He likewise promised that the Government would take measures for the liberation of the crew of the "Grange" and restitution of the vessel and cargo, and concurred with Mr. Hammond that the establishment of a French Prize Court at Charleston was "not warranted by the usage of nations nor by the stipulations existing between the United States and France."

Mr. Hammond's note requesting the restoration of the prizes was reserved for further consideration.

M. Genet reached Philadelphia on the 16th of May 1793. The previous day a note had been addressed to his predecessor, M. Ternant, by Mr. Jefferson, recounting the claims of violations of neutrality preferred by

the British Minister, Mr. George Hammond, and calling his attention to the seizure of the English barque "Grange" by the French frigate "Abondance" in the Delaware River. Attached to this note is a Report of Attorney-General Randolph on the general question of maritime jurisdiction. M. Genet restored the vessel. The correspondence continued until the 5th of June, when the final decision of the United States Government was conveyed to M. Genet and Mr. Hammond in the following official notes:

Mr. JEFFERSON to M. GENET.

SIR, Philadelphia, June 5th, 1793.

In my letter of May the 15th to Mr. Ternant, your predecessor, after stating the answer which had been given to the several memorials of the British Minister of May the 8th, it was observed that a part still remained unanswered of that which respected the fitting out of armed vessels in Charleston, to cruise against nations with whom we were at peace.

In a conversation which I had afterwards the honour of holding with you, I observed that one of these armed vessels, the citizen Genet, had come into this port with a prize; that the President had thereupon taken the case into further consideration, and after mature consultation and deliberation, was of opinion, that the arming and equipping vessels in the ports of the United States to cruise against nations with whom they are at peace, was incompatible with the Territorial Sovereignty of the United States, that it made them instrumental to the annoyance of those nations, and thereby tended to compromise their peace; and that he thought it necessary as an evidence of good faith to them, as well as a proper reparation to the Sovereignty of the country that the armed vessels of this description should depart from the ports of the United States.

The letter of the 27th ultimo, with which you have honoured me, has been laid before the President and that part of it which contains your observations on this subject has been particularly attended to. The respect due to whatever comes from your friendship for the French nation and justice to all, have induced him to re-examine the subject and particularly to give your representations thereon, the consideration they deservedly claim. After fully weighing again, however, all the principles and circumstances of the case, the result appears still to be, that it is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits; and the duty of a neutral to prohibit such as would injure one of the warring powers, that the granting military commissions within the United States by any other authority than their own, is an infringement on their sovereignty, and particularly so when granted to their own citizens to lead them to act contrary to the duties they owe to their own country; that the departure of vessels thus illegally equipped from the parts of the United States, will be but an acknowledgment of respect analogous to the breach of it, while it is necessary on their part, as an evidence of their faithful neutrality. On these considerations, sir, the President thinks that the United States owe it to themselves and to the nations in their friendship, to expect this out of reparation on the part of vessels marked in their very equipment with offence to the laws of the land, of which the law of nations makes an integral part.

The expressions of friendly sentiment which we have already had the satisfaction of receiving from you, leave no room to doubt that the conclusion of the President being thus made known to you, these vessels will be permitted to give no further umbrage by their presence in the ports of the United States.

I have, &c.

T. JEFFERSON.

Mr. JEFFERSON to Mr. HAMMOND.

SIR, Philadelphia, June 5, 1793.

In the letter which I had the honour of writing you on the 15th of May, in answer to your several Memorials of the 8th of that month, I mentioned that

Jefferson's Works, vol. iii, p. 571.

American State Papers, vol. i, p. 147.

the President reserved for further consideration a part of the one which related to the equipment of two privateers in the port of Charleston. The part alluded to was that wherein you express your confidence that the Executive Government of the United States would pursue measures for repressing such practices in future, and for restoring to their rightful owners any captures which such privateers might bring into the ports of the United States.

The President, after a full investigation of this subject and the most mature consideration, has charged me to communicate to you that the first part of this application is found to be just, and that effectual measures are taken for preventing repetitions of the act therein complained of; but that the latter part, desiring restitution of the prizes, is understood to be inconsistent with the rules which govern such cases, and would, therefore, be unjustifiable towards the other party.

The principal agents in this transaction were French citizens. Being within the United States at the moment a war broke out between their own and another country, they determined to go into its defence; they purchase, arm, and equip a vessel with their own money, man it themselves, receive a regular commission from their nation, depart out of the United States, and then commence hostilities by capturing a vessel. If under these circumstances the commission of the captors was valid, the property according to the laws of war was by the capture transferred to them, and it would be an aggression on their nation for the United States to rescue it from them, whether on the high seas or on coming into their ports. If the commission was not valid, and consequently the property not transferred by the laws of war to the captors, then the case would have been cognisable in our Courts of Admiralty, and the owners might have gone thither for redress. So that on neither supposition would the Executive be justifiable in interposing.

With respect to the United States, the transaction can in no wise be imputed to them. It was in the first moment of the war, in one of their most distant ports, before measures could be provided by the Government to meet all the cases which such a state of things was to produce, impossible to have been known, and therefore impossible to have been prevented by that Government.

The moment it was known the most energetic orders were sent to every State and port in the Union to prevent a repetition of the accident. On a suggestion that citizens of the United States had taken part in the act, one who was designated was instantly committed to prison for prosecution, one or two others have been since named and committed in like manner; and should it appear that there were still others, no measures will be spared to bring them to justice. The President has even gone further. He has required, as a reparation of their breach of respect to the United States, that the vessels so armed and equipped shall depart from our ports.

You will see, Sir, in these proceedings of the President unequivocal proofs of the line of strict right which he means to pursue. The measures now mentioned are taken in justice to the one party, the ulterior measure of seizing and restoring the prizes is declined in justice to the other, and the evil thus early arrested will be of very limited effect; perhaps, indeed, soon disappear altogether.

I have, &c.  
(Signed) TH. JEFFERSON.

Shortly afterwards a case occurred in which M. Genet openly defied the authority of the Government. An English letter of marque, the "Little Sarah," had been captured by a French frigate and sent into Philadelphia, where she was fitted out as a privateer under the name of the "Little Democrat." M. Genet was applied to to stop this vessel from sailing, but he refused to interfere, and said that force would be repelled by force. A detachment of 120 militia were sent to guard the vessel, but on M. Genet entering

into an implied engagement that the vessel should not leave the river, they were withdrawn. The President then determined to submit to the Judges a series of questions upon the points at issue between the Government and M. Genet, and requested the latter to detain the "Little Democrat," the ships "Jane" and "William" in the Delaware, the "Citoyen Genet," and her two prizes, the "Lovely Lass" and "Prince William Henry," and the brig "Fanny" in the Chesapeake, until the opinion of the Judges could be ascertained. The "Little Democrat" sailed four or five days after this, while the Judges declined to answer the queries put by the Executive as out of the sphere of their judicial duties, which were limited to cases of legal controversy. The Cabinet accordingly decided to lay down certain rules to be observed towards belligerents in the ports of the United States. These rules were carefully framed in accordance with the received doctrines of international law, slightly modified by the Treaty between the United States and France, and were communicated to the collectors of customs with the following circular:

Instructions to the Collector of Customs.

Sir, Philadelphia, August 4, 1793.

It appearing that repeated contraventions of our Neutrality Laws have taken place in the ports of the United States, without having been discovered in time for prevention or remedy, I have it in command from the President to address to the collectors of the respective districts a particular instruction on the subject.

It is expected that the officers of Customs in each district will, in the course of their official functions, have a vigilant eye upon whatever may be passing within the ports, harbours, creeks, inlets, and waters of such district, of a nature to contravene the Laws of Neutrality, and upon discovery of anything of the kind, will give immediate notice to the Governor of the State, and to the attorney of the judicial district comprehending the district of the Customs within which any such contravention may happen.

To assist the judgment of the officers on this head, I transmit herewith a schedule of rules concerning sundry particulars which have been adopted by the President, as deductions from the Laws of Neutrality, established and received among nations. Whatever shall be contrary to these rules will, of course, be to be notified as above mentioned.

There are some points which, pursuant to our Treaties, and the determination of the Executive, I ought to notice to you.

If any vessel of the Powers at war with France should *bring or send* within your district a prize made of the subjects, people, or property of France, it is immediately to be notified to the Governor of the State, in order that measures may be taken, pursuant to the 17th Article of the Treaty with France, to oblige such vessel and her prize, or such prize, when sent in without the capturing vessel, to depart.

No privateer of any of the Powers at war with France, coming within a district of the United States, can, by the 22nd article of our Treaty with France, enjoy any other privilege than that of *purchasing such victuals as shall be necessary for her going to the next port of the Prince or State from which she has her commission*. If she should do anything beside this, it is immediately to be reported to the Governor, and the attorney of the district. You will observe by the rules transmitted, that the term privateer is understood not to extend to vessels armed, for merchandise and war, commonly called with us *letters of marque*, nor, of course, to vessels of war in the immediate service of the Government of either of the Powers at war.

No armed vessel which has been or shall be *originally fitted out* in any port of the United States, by either of the parties at war, is henceforth to have asylum in any district of the United States. If any such armed vessel shall appear within your district, she is immediately to be notified to the Governor and to the attorney of the district, which is also to be done in

American  
State Papers  
vol. i. page  
163.  
Mr. Jefferson  
to M. Genet  
July 12, 1793

Tucker,  
vol. i. p. 51

Mr. Hamilton  
to the  
Collectors  
of Customs  
August 4,  
1793.  
American  
State Papers  
vol. i. p. 18

respect to any prize that such armed vessel shall bring or send in. At foot is a list of such armed vessels of the above description as have hitherto come to the knowledge of the Executive.

The purchasing within and exporting from the United States, *by way of merchandise*, articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of the parties, they will be abandoned to the penalties which the laws of war authorize.

You will be particularly careful to observe, and to notify as directed in other instances, the case of any citizen of the United States who shall be found in the service of either of the parties at war.

In case any vessel shall be found in the act of contravening any of the rules or principles which are the ground of this instruction, she is to be refused a clearance until she shall have complied with what the Governor shall have decided in reference to her. Care, however, is to be taken in this, not unnecessarily or unreasonably to embarrass trade or to vex any of the parties concerned.

In order that *contraventions* may be the better ascertained, it is desired that the officer who shall first go on board any vessel arriving within your district shall make an accurate survey of her then condition as to *military equipment* to be forthwith reported to you: and that, prior to her clearance, a like survey be made, that any transgression of the rules laid down may be ascertained.

But, as the propriety of any such inspection of a *vessel of war in the immediate survey of the Government* of a foreign nation is not without question in reference to the usage of nations, no attempt is to be made to inspect any such vessel till further orders on the point.

The President desires me to signify to you his most particular expectation that the instructions contained in this letter will be executed with the greatest vigilance, care, activity, and impartiality. Omissions will tend to expose the Government to serious imputations and suspicions, and proportionably to commit the good faith and peace of the country, objects of too much importance not to engage every proper exertion of your zeal.

With consideration,  
I am, sir, &c.

ALEXANDER HAMILTON.

"1. The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

"3. Equipments in the ports of the United States of vessels of war in the immediate service of the Government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France, coming with their prizes into the ports of the United States, pursuant to the XVIIth Article of our Treaty of Amity and Commerce with France.

"4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commissions, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful, except those which shall have made prize, &c.

"5. Equipments of any of the vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

"6. Equipments of every kind, in the ports of the United States, of privateers of the Powers at war France, are deemed unlawful.

21659

"7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the XVIIIth Article of our Treaty with France, the XVIth of our Treaty with the United Netherlands, the XVIIIth of our Treaty with Prussia.

"8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist their own subjects or citizens, not being inhabitants of the United States, except privateers of the Powers at war with France, and except those vessels which have made prizes, &c."

On the 7th of August Mr. Jefferson wrote to M. Genet, stating that the President had decided that compensation or restitution should be made in the case of vessels brought into United States ports as prizes by privateers fitted out in such ports since the 5th of June, and consequently called on him to restore these prizes, as otherwise the Government of France would be considered liable for the repayment of the compensation paid to the persons aggrieved. Mr. Jefferson adds, "that besides taking efficacious measures to prevent the future fitting out privateers in the ports of the United States, they will not give asylum therein to any which shall have been at any time so fitted out, and will cause restitution of all such prizes as shall be hereafter brought within their ports by any of the said privateers."

Mr. Hammond was also informed of this decision of the President.

MR. JEFFERSON TO MR. HAMMOND.

Sir, Philadelphia, August 7th 1793.

A constant expectation of carrying into full effect the declaration of the President against permitting the armament of vessels within the ports of the United States to cruise on nations with which they are at peace, has hitherto prevented me giving you a final answer on the subject of such vessels and their prizes. Measures to this effect are still taking, and particularly for excluding from all further asylum in our ports the vessels so armed and for the restoration of the prizes the "Lively Lass," the "Prince William Henry," and the "Jane of Dublin," taken by them; and I am authorized in the meantime to assure you that should the measures for restoration fail in their effect, the President considers it as incumbent upon the United States to make compensation for the vessels.

I have, &c.

T. JEFFERSON.

The affair of the "Little Democrat," in which the Government was "thus insulted and set at defiance by M. Genet," determined them on asking for his recall; and the United States Minister at Paris was accordingly instructed, on the 16th of August, to represent to the French Government that if M. Genet persevered in his proceedings the United States Government would "be forced even to suspend his functions before a successor could arrive to continue them."

M. Genet seems to have tried to test the neutrality of the United States Government on every point. He maintained the right of the French Government not only to issue commissions and to equip vessels, but also openly to man their privateers in American ports. Two seamen, named Henfield and Singletary, were arrested on board the "Citizen Genet" at Philadelphia, for having enlisted in the French service. M. Genet remonstrated in his usual bombastic style, demanding their immediate release. This was refused, and Henfield brought to trial. The jury, however, acquitted him on the plea of his having been ignorant of having committed an offence in taking service in a French privateer. M. Genet also engaged in an intrigue for the seizure of New Orleans by some malcontents in Kentucky. In short, he managed during the few months he remained the Representative of France to damage the interests of his country in every conceivable way; while the temperate re-

American State Papers, vol. 1, page 167.

MS. Inclosure in Mr. Hammond's despatch to Lord Grenville August 10, 1793.

Mr. Jefferson to Mr. Morris, United States Minister at Paris, August 16, 1793.

American State Papers, vol. 1, page 167.

M. Genet to Mr. Jefferson; June 1, 1793.

American State Papers, vol. 1, page 151.

Tucker, vol. 1, pages 517 and 518.

monstrances of the English Minister afforded a contrast to these exaggerated pretensions, and served to confirm the President in his policy of neutrality and to influence the Cabinet in favour of England.

MS. Inclosure in Mr. Hammond's despatch to Lord Grenville of the 17th of September 1793.

Certain prizes having been brought in by vessels fitted out after the 5th of June as well as those brought in by vessels fitted out before that date, of which restitution had already been refused, Mr. Hammond wrote on the 30th of August to Mr. Jefferson requesting to be informed of the precise intentions of the Government respecting the restoration of prizes.

Mr. Hammond says: "I understand that all captures made subsequently to the 5th of June, and antecedently to the 7th of August, by any vessel fitted out, armed and equipped in the ports of the United States are either to be restored to the captors, or a compensation for their full value is to be paid to their owners by the Government of the United States, and that all prizes made by vessels of this description subsequently to the 7th of August are to be seized, and immediately restored by the Government of the United States, or if the restitution cannot be effected, a compensation for their full value is to be paid in the same manner as in the former case."

Mr. Jefferson replied on the 5th of September:—  
Sir, Philadelphia, September 5, 1793.

I am honoured with yours of August 30. Mine of the 7th of that month assured you that measures were taken for excluding from all further asylum in our ports vessels armed in them to cruise on nations with which we are at peace, and for the restoration of the prizes the "Lovely Lass," "Prince William Henry," and the "Jane," of Dublin, and that should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

We are bound by our Treaties with three of the belligerent nations, by all the means in our power, to protect and defend their vessels and effects in our ports or waters, or on the seas near our shores, and to recover and restore the same to the right owners when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our Treaties with those nations to make compensation.

Though we have no similar Treaty with Great Britain, it was the opinion of the President that we should use towards that nation the same rule which, under this Article, was to govern us with the other nations, and even to extend it to captures made on the high seas, and brought into our ports, if done by vessels which had been armed within them.

Having, for particular reasons, forbore to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7, the President thought it incumbent on the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the 5th of June, and before the date of that letter, yet, when the same forbearance had taken place, it was and is his opinion that compensation would be equally due.

As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our Treaties to make compensation to the other Powers, in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

Instructions are given to the Governors of the different States to use all the means in their power for restoring prizes of this last description found within their ports. Though they will, of course, take measures to be informed of them, and the General Government has given them the aid of the Custom house officers

for this purpose, yet you will be sensible of the importance of multiplying the channels of their information as far as shall depend on yourself or any person under your direction, in order that the Governors may use the means in their power for making restitution. Without knowledge of the capture, they cannot restore it. It will always be best to give the notice to them directly; but any information which you shall be pleased to send to me also, at any time, shall be forwarded to them as quickly as distance will permit.

Hence you will perceive, Sir, that the President contemplates restitution or compensation in the cases before the 7th of August, and after that date, restitution, if it can be effected by any means in our power, and that it will be important that you should substantiate the fact that such prizes are in our ports or waters.

Your list of the privateers illicitly armed in our ports is, I believe, correct.

With respect to losses by detention, waste, spoliation, sustained by vessels taken as before mentioned, between the dates of the 5th June and the 7th August, it is proposed as a provisional measure that the Collector of the Customs of the district, and the British Consul, or any other person you please, shall appoint persons to establish the value of the vessel and cargo, at the time of her capture, and of her arrival in the port into which she is brought, according to their value in that port.

If this shall be agreeable to you, and you will be pleased to signify it to me, with the names of the prizes understood to be of this description, instructions will be given accordingly to the Collectors of the Customs where the respective vessels are.

I have, &c.,

(Signed) TH. JEFFERSON.

This letter was appended to the Treaty of the 19th of November 1794.

The particular reasons referred to were the unwillingness of the United States' Government to oppose the sailing of the French privateers by force.

The result of the publication of the Rules of the 4th August was that the system of privateering was, generally speaking, suppressed, though cases seem to have occurred until the arrival of M. Genet's successor in February 1794, who disavowed his acts, and recalled the commissions he had granted to privateers.

It must be remembered that the United States did not possess any navy at this time, the construction of a naval force not being carried out until 1794; so that even if the Government wished to stop a privateer, they could only do so by employing militia to board her, unless she happened to be lying under the guns of a fort.

In October, M. Duplaine, the French Vice-Consul at Boston, having rescued by force a suspected vessel which had been seized by the Marshall, the United States Government withdrew his exequatur.

Congress met on the 3rd of December, and in his address the President spoke of the measures adopted for the preservation of neutrality, and the necessity for legislation on the subject in the following terms:—

"As soon as the war in Europe had embraced those Powers with whom the United States have the most extensive relations, there was reason to apprehend that our intercourse with them might be interrupted, and our disposition for peace drawn into question by the suspicions too often entertained by belligerent nations." \* \* \* "In this posture of affairs, both new and delicate, I resolved to adopt general rules which should conform to the treaties and assert the privileges of the United States." \* \* \* "Although I have not thought myself at liberty to forbid the sale of prizes permitted by our Treaty of Commerce with France to be brought into our ports, I have not refused to cause them to be restored when they were taken within the protection of our territory or by vessels commissioned or equipped

Hertslett's State Papers, vol. i. page 501.

Mr. Jefferson to Mr. Morris; August 16, 1793.

American State Papers, vol. i. page 167.

American State Papers, vol. i. page 21.



in warlike form within the limits of the United States. It rests with the wisdom of Congress to correct, improve, or enforce this plan of procedure, and it will probably be found expedient to extend the legal code and the jurisdiction of the Courts of the United States to many cases which, though dependent on principles already recognized, demand some further provisions.

"Where individuals shall within the United States array themselves in hostility against any of the Powers at war, or enter upon military expeditions or enterprises within the jurisdiction of the United States, or usurp and exercise judicial authority within the United States, or where the penalties on violations of the law of nations may have been indistinctly marked or are inadequate; these offences cannot receive too early and close an attention, and require prompt and decisive remedies." \* \* \* \* "In like manner, as several of the Courts have doubted under particular circumstances their power to liberate the vessels of a nation at peace, and even of a citizen of the United States, although seized under a false colour of being hostile property, and have denied their power to liberate certain captures within the protection of our territory, it would seem proper to regulate their jurisdiction in these points."

Tucker, vol. i. page 526.

Soon after the opening of the sessions Jefferson retired from the Cabinet into private life, and did not take any active part in politics for the next three years. Washington was thus left free to carry out his policy and to establish relations with England on a more friendly footing.

The early part of the session was occupied with discussions on the imposition of a protective duty on trade with nations not having Commercial Treaties with the United States. This measure was aimed at British trade, and was a consequence of the ill-feeling that had been occasioned by the British Orders in Council of June and November 1793, authorizing the seizure of United States merchant-ships laden with corn for France, or found attempting to break the blockade.

The next measure introduced was for the construction of a navy, and was intended as a provision against the contingency of a war with England, although nominally adopted as a defence for American commerce against the Algerine pirates.

On the 27th of March Mr. Dayton, of New Jersey, offered a resolution for sequestering all debts due to British subjects, as a fund to indemnify citizens of the United States for the unlawful depredations of British cruisers.

Before any vote was taken, Mr. Clarke of New Jersey proposed that all intercourse with Great Britain should be prohibited until satisfaction was obtained.

American State Papers, vol. i. page 431.

While these subjects were pending, the President, on the 4th of April, communicated to Congress a despatch from Mr. Pinckney, the United States Minister in London, forwarding a copy of an Order in Council of the 8th of January, modifying the instructions to cruisers contained in the previous Orders.

This caused the popular feeling to incline in favour of England, and the Republican or anti-Federal party abandoned their scheme of commercial retaliation, and assented to a proposition made by the Federalists, that a Special Mission should be sent to England to settle the various questions in dispute.

Tucker, vol. i. page 541.

Mr. Jay, Chief Justice of the Supreme Court, a descendant of one of the families which took refuge in England at the time of the revocation of the Edict of Nantes, a Federalist and friend of the English cause, was selected for the post of Envoy.\*

Vie de Washington, par De Witt

He was nominated on the 16th of April but did not arrive in London until the 15th of June.

\* See the correspondence respecting Mr. Jay's mission, American State Papers, vol. i, pages 470 to 525. (There is an interesting report on the Law of Prize, furnished to Mr. Jay by Sir W. Scott and Dr. Nicholl, which deserves attention, page 494.)

The inadequacy of the existing law to deal with even the grossest breach of the Neutrality Proclamation had been shown a short time previously by the grand jury of Philadelphia having refused to find a true Bill against the French Vice-Consul Duplaine (the Vice-Consul whose exequatur had been withdrawn in October 1793) for the forcible rescue of the "Greyhound."

It was apparent that no time must be lost in amending the law on this subject, and in accordance with the recommendation in the President's message, a bill was now introduced for the purpose.

The bill was vigorously opposed by the Republicans, and "would have been defeated in the Senate, if repeated motions made with that view had not been lost by the vote of the Vice-President.

Tucker, vol. i. page 546.

"The Republican party had a majority in the Senate of one member, but the seat of Mr. Gallatin from Pennsylvania, one of that majority, having been contested and set aside on the ground that he had not been a citizen so long as the constitution required, the two parties were exactly balanced."

This Act which forms the basis of the United States Neutrality Laws, contains ten clauses and is entitled "An Act in addition to the Act for the punishment of certain crimes against the United States." (The Act thus referred to is the Act of April 30, 1790, providing for the punishment of high treason and other offences against the state or individuals.) As this Act is substantially the same as the Act of 1818, and as, in referring to that Act, attention will be called to the points in which they differ, it will be sufficient to give here a short abstract of the different Articles.

United States Statutes at Large; third Congress, sess. 1, ch. 50, June 5, 1794. British State Papers (Hertslet's) vol. iv. page 389.

Sec. 1. Any citizen of the United States within the jurisdiction of the same accepting or exercising a commission to serve a foreign Prince or State by sea or land liable to a fine of 2,000 dollars, or imprisonment for not more than three years.

Sec. 2. Any person within the jurisdiction of the United States entering himself or enlisting others, or hiring or retaining another person to enlist for the service of the army or navy of any foreign Prince or State, liable to a fine of 1,000 dollars, or three years' imprisonment. This not to apply to foreigners transiently within the United States. Any person so enlisted giving information within thirty days to be indemnified from punishment.

Sec. 3. Any person within any of the ports, harbours, bays, rivers, or other waters of the United States, fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or attempting to, &c., or knowingly concerned in the furnishing, &c., of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign State, to cruise or commit hostilities against the subjects, citizens, or property of another State, with which the United States shall be at peace, or commissioning any such vessel, to be liable to a fine of 5,000 dollars or three years' imprisonment, and the vessel, tackle, &c., to be forfeited, one half to the informer and the other half to the United States.

Sec. 4. Any person augmenting or procuring to be augmented the force of any ship of war in the service of a State at war with a State with which the United States are at peace, by adding to the number or size of the guns of such vessel, or by the addition thereto of any equipment solely applicable to war, to be liable to a fine of 1,000 dollars or imprisonment for one year.

Sec. 5. Any person within the jurisdiction of the United States setting on foot or preparing any military enterprise against any State with which the United States are at peace, to be liable to a fine of 3,000 dollars or one year's imprisonment.

Sec. 6. District courts to have cognizance of captures made within the waters or within a marine league of the coasts or shores of the United States.

Sec. 7. The militia or land or naval forces to be employed for enforcing this Act, for detaining any vessel contravening it and her prizes, and for restoring such prizes when restoration may be adjudged, and for preventing illegal military expeditions.

Sect. 8. The militia, &c., to be employed as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which, by the law of nations or the Treaties of the United States, they ought not to remain within the United States.

Sect. 9. Prosecution of treason or piracy not to be impaired.

Sect. 10. The Act to continue in force for two years, and thence to the end of the next session of Congress.\*

This Act afforded an answer to M. Genet's pretensions and to Mr. Hammond's complaints. It now only remains to be seen how the British claims acknowledged in Mr. Jefferson's letter of the 5th of September 1793 were disposed of.

This was done by the insertion in the Treaty concluded by Mr. Jay on the 19th of November,† 1794, of Articles providing for the appointment of Commissioners to consider the compensation to be awarded (Article VII.) in cases of complaints made by United States merchants of loss and damage sustained "by reason of irregular or illegal captures or condemnations of their vessels and other property under colour of authority or commissions from His Majesty;" and also in cases of complaints of His Majesty's subjects, "that in the course of the war they have sustained loss and damage by reason of the capture of their vessels and merchandise taken within the limits and jurisdiction of the States, and brought into the ports of the same, or taken by vessels originally armed in ports of the said States,"

"where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793." And (Article XXI.) it is likewise "agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign Prince or State," &c.

"Art. XXIV. It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other Prince or State in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken," &c.

"Art. XXVIII. It is agreed that the first ten Articles of this Treaty shall be permanent, and the subsequent Articles, except the twelfth (providing for trade with the West Indies), shall be limited in their duration to twelve years" from the exchange of ratifications.

As previously stated, Mr. Jefferson's letter of the 5th of September 1793, was annexed to this Treaty, so that the effect of the 7th Article was to make compensation to Great Britain for all prizes taken by vessels fitted out by France in the United States after the 5th of June 1793, (the date of Mr. Jefferson's letter of prohibition to M. Genet,) if such prizes had been brought into ports of the United States; but not to make compensation for any prizes brought in by vessels fitted out before the 5th of June 1793, or for any prizes whatever, not brought into United States ports.

Having thus traced the United States Neutrality Law from its origin in the Proclamation of the 22nd of April 1793, to the Act of 1794, it may be convenient to notice some of the principal decisions in the Supreme Court of cases illustrative of the operation of the law as thus originally framed.

February 1794. The sloop "Betsy" (a vessel captured by the French privateer the "Citizen Genet" and sent into Baltimore).

*Judgment.*—No foreign Power can rightfully erect any Court of Judicature within the United States unless by force of a Treaty.

\* Re-enacted March 2, 1797, and made perpetual April 24, 1800.

† This was the first Treaty providing for a Commission to investigate British and American claims. A second Commission was appointed under the Treaty of Ghent of 1814 to consider claims arising from the seizure of slaves; and a third under the Convention of February 8, 1853, for the general settlement of outstanding claims.

The Admiralty jurisdiction exercised by Consuls of France in the United States is not of right.

August 1795. Talbot v. Janson. Case of a Dutch vessel, the "Magdalena," brought into Charleston by the privateer "L'Ami de la Liberté," alleged to have been an American-owned Ship, armed and equipped in Chesapeake Bay and Charleston.

*Judgment.*—The capture of a vessel of a country at peace with the United States, made by a vessel fitted out in one of our ports, and commanded by one of our citizens, is illegal; and if the captured vessel is brought within our jurisdiction, the District Courts, upon a libel for a tortious seizure, may inquire into the facts and decree restitution.

Restitution decreed with damages.

August 1796. Moodie v. the ship "Alfred."

*Judgment.*—It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer, and having some equipments calculated for war, but frequently used by merchant-ships.

Restitution refused.

August 1796. Moodie v. the ship "Phœbe Anne."

*Judgment.*—Under the XIXth Article of the Treaty with France a privateer has a right to make repairs in our ports.

The replacement of her force is not an augmentation of it.

Restitution refused.

In June 1797 a short Act was passed prohibiting any citizen of the United States, "without the limit of the same," from fitting out and arming, &c., any private ship or vessel of war with intent, &c., or taking the command of or entering on board of, or purchasing any interest in any such vessel under penalty of a fine of 10,000 dollars, or imprisonment for not more than ten years.

This Act was entirely repealed by the Act of 1818.

The restriction imposed on intercourse with France in 1799 by the Act of Congress of the 9th of February put a stop to any further privateering cases, and the next report of a decision affecting international relations occurs in February 1804.

"Church v. Hubbard." Case of the "Aurora" seized at Para for attempted smuggling. The case was brought before the United States Court on an insurance claim.

In pronouncing judgment, Chief Justice Marshall observed: "The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. Upon this principle, the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted.

A case arose in 1808 as to the validity of the capture by a French privateer of a ship despatched from a port held by the St. Domingo rebels, and the subsequent condemnation of her cargo in the Court of the French Delegate at Santo Domingo, (Rose v. Himely. Case of the "Sarah," February 1808). Amongst other matters affecting the Law of Prize, it was laid down that, whether a revolted Colony is to be treated as a sovereign State, is a political question to be decided by Governments, not by Courts of Justice; and the Courts of the United States must consider the ancient state of things as remaining until the sovereignty of the revolted Colony is acknowledged by the Government of the United States.

Restitution decreed without costs.

In March 1866 Miranda's expedition against Caracas was fitted out at New York. The expedition consisted of the "Leander," armed vessel of 18 guns, and two schooners. Miranda was met by two Spanish ships of war off Puerto Cabello. An action ensued, in which he lost his schooners and was compelled to take refuge at Grenada. Fifty-seven of his followers were taken in the schooners and carried to Puerto

Curtis, vol. i. page 128.

Ibid, vol. i. page 234.

Ibid, vol. i. page 237.

"United States Statutes at Large, vol. i. page 520. Fifth Congress, sess. 1. ch. 1; June 14, 1797.

Curtis, vol. i. page 470.

Curtis, vol. ii. page 87.

Annual Register, 1866.

American State Papers, vol. i. page 20.

Decisions in the Supreme Court of the United States. Curtis, vol. i. page 74.

Cabello where they were tried for piracy, 10 of them condemned to death and the rest to imprisonment.

President Jefferson, in his message to Congress of the 2nd of December 1806, speaks of this expedition in the following terms: "Having received information that, in another part of the United States, a great number of private individuals were combining together, arming, and organizing themselves, contrary to law, to carry on a military expedition against the territories of Spain, I thought it necessary, by proclamation as well as by special orders, to take measures for preventing and suppressing this enterprize, for seizing the vessels, arms, and other means provided for it, and for arresting and bringing to justice its authors and abettors. It was due to that good faith which ought ever to be the rule of action in public as in private transactions; it was due to good order and regular government, that while the public force was acting strictly on the defensive, and merely to protect our citizens from aggression, the criminal attempts of private individuals to decide for their country the question of peace or war by commencing active and unauthorized hostilities, should be promptly and efficaciously suppressed."

Writing to Don Valentine de Foronda in 1809, President Jefferson said of this transaction, "Your predecessor, soured on a question of etiquette against the administration of this country, wished to impute wrong to them in all their actions, even where he did not believe it himself. In this spirit he wished it to be believed that we were in unjustifiable co-operation in Miranda's expedition. I solemnly and on my personal truth and honour, declare to you that this was entirely without foundation and that there was neither co-operation nor connivance on our part. He informed us he was about to attempt the liberation of his native country from bondage, and intimated a hope of our aid, or connivance at least. He was at once informed that although we had great cause of complaint against Spain and even of war, yet whenever we should think proper to act as an enemy it should be openly and above board, and that our hostility should never be exercised by such petty means. We had no suspicion that he expected to engage men here, but merely to purchase military stores. Against this there was no law, nor consequently any authority for us to interpose obstacles. On the other hand, we deemed it improper to betray his voluntary communication to the agents of Spain. Although his measures were many days in preparation at New York, we never had the least intimation or suspicion of his engaging men in his enterprize until he was gone; and I presume the secrecy of his proceeding kept them equally unknown to the Marquis Yrujo at Philadelphia and the Spanish Consul at New York, since neither of them gave us any information of the enlistment of men, until it was too late for any measures taken at Washington to prevent their departure. The officer in the Customs who participated in this transaction with Miranda we immediately removed, and should have had him and others further punished had it not been for the protection given them by private citizens at New York, in opposition to the Government, who, by their impudent falsehoods and calumnies, were able to overbear the minds of the jurors."

Mr. Dana, in his recent edition of Wheaton, remarks, "The Spanish Government complained that a military expedition had been fitted out in New York, under Miranda, in 1806, to operate against Spain in South America. There seems no doubt that this might and ought to have been prevented by us."

The war between Spain and her Colonies broke out in 1810, and the United States Government again found themselves placed in a position of great difficulty for maintaining their neutrality. The sympathies of the people of the United States were naturally warmly enlisted on behalf of their fellow Republicans; while it would appear that the equipment of vessels to cruise against Spanish commerce was a profitable as

well as a popular undertaking, and became a kind of commercial speculation.

In December 1810, a vessel named the "Exchange," of Baltimore, was captured by a French privateer on a voyage to St. Sebastian's, in Spain; afterwards coming to Philadelphia as a French public vessel under the name of the "Balaon."

The schooner "Exchange" v. McFadden and others, February 1812.

The French captain averred that he had put into Philadelphia from stress of weather, and produced an affidavit of the French Consul verifying his commission, and stating that the public vessels of the Emperor of France never carry with them any other document or evidence that they belong to him than his flag, the commission and the possession of his officers.

**Judgment.**—A public armed vessel in the service of a Sovereign at peace with the United States is not within the ordinary jurisdiction of our tribunals, while in a port in the United States.

But the sovereign power of the United States may interpose and impart such a jurisdiction.

Restitution refused.

February 1815.—The brig "Alerta" and cargo v. Blas.

**Judgment.**—If a capture be made by a privateer which had been illegally equipped in a neutral country, the Prize Courts of such neutral country have power, and it is their duty, to restore the captured property if brought within their jurisdiction, to its owner.

Vessel and cargo restored.

On the 1st of September 1815, President Madison issued a proclamation prohibiting the outfit of illegal expeditions in the United States:

"Whereas information has been received that sundry persons, citizens of the United States, or residents within the same, and especially within the State of Louisiana, are conspiring together to begin and set on foot, provide, and prepare the means for a military expedition or enterprize against the dominions of Spain, with which the United States are happily at peace; that for this purpose they are collecting arms, military stores, provisions, vessels, and other means, and deceiving and seducing honest and well meaning citizens to engage in their unlawful enterprizes; or organizing, officering, and arming themselves for the same, contrary to the laws in such cases made and provided. I have therefore thought fit to issue this my proclamation, warning and enjoining all faithful citizens who have been led, without due knowledge or consideration, to participate in the said unlawful enterprizes, to withdraw from the same without delay, and commanding all persons whatsoever engaged or concerned in the same to cease all further proceedings therein, as they will answer the contrary at their peril. And I hereby enjoin and require all officers, civil and military, of the United States, or of any of the states or territories, all judges, justices, and other officers of the peace, all military officers of the army or navy of the United States, and officers of the militia to be vigilant, each within his respective department, and according to his functions, in searching out and bringing to punishment all persons engaged or concerned in such enterprizes; in seizing and detaining, subject to the disposition of the law, all arms, military stores, vessels, or other means provided or providing for the same, and in general in preventing the carrying on such expedition or enterprize by all the lawful means within their power; and I require all good and faithful citizens and others within the United States to be aiding and assisting herein, and especially in the discovery, apprehension, and bringing to justice all such offenders, in preventing the execution of their unlawful combinations or designs, and in giving information against them to the proper authorities.

"JAMES MADISON."

"Washington, September 1, 1815.

In 1816 the Portuguese-Brazilian Government intervened by force in Buenos Ayres, and thus became

States, 1817-18, and of Portugal and the United States, 1816-51.

Curtis, vol. ii. p. 478.

Curtis, vol. iii. p. 579.

American State Papers, vol. iv. p. 1.

Annual Register, 1816.

American State Papers, vol. i., page 68.

Jefferson's Works, vol. v., page 473.

Wheaton's Elements of International Law is edited by R. H. Dana; 8th edition, 1868, page 558.—Note.

Correspondence between the Government of Spain and the United



a party to the contest between Spain and her South American colonies.

In December of that year President Madison communicated to Congress the following message :

" Washington December 26, 1816.

" It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace towards belligerent parties, and other unlawful acts in the high seas by armed vessels equipped within the waters of the United States.

" With a view to maintain more effectually the respect due to the laws, to the character and to the neutral and pacific relations of the United States. I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in a course of equipment, with a warlike force, within the jurisdiction of the United States ; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws and which the law of nations does not require the United States to prohibit.

" JAMES MADISON."

The Committee of Foreign Affairs at the same time laid before the House of Representatives some papers relating to this subject, among which were a letter from the Secretary of State (Mr. Munroe), reporting :

" That the provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruising, seem to be  
" 1st. That they should be laid under bond not to violate the treaties of the United States or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels subsequent to their departure.

" 2nd. To invest the collectors or other revenue officers where there are no collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law : the detention to take place until the executive, on a full representation of the facts had thereupon can be obtained. The statute book contains analogous powers to this above suggested. (See particularly the 11th section of the Act of Congress of April 25, 1808."

" The existing laws do not go this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offence where, if there be full evidence of the actual perpetration of the crime, the party is bonded over after the trial to the penalty denounced."

On the 3d of March 1817, a short Act was passed, in which (in order to meet a question which had been raised as to whether the South American armies, not being formerly recognized as independent communities came within the scope of the Act of 1794,) the terms " army, district, or people, are inserted after the phrase, " prince or State as it stands in the first section of the Act of 1794.

The recommendations of the president and Mr. Monroe were partially carried out by provisions in the second and third sections of this Act for a bond being taken from the owners of suspected vessels.

The president in his message to Congress of the 2d of December 1817, called attention to piratical establishments which had been constituted at Amelia Island and Galveston and stated that instructions had been given for their suppression. " These establishments, if ever sanctioned by any authority whatever

" which is not believed, have abused their trust and forfeited all claim to consideration."

It appears that these places were used as rendezvous for smugglers and slave dealers who introduced slaves from them into the United States in defiance of the laws.

Amelia Island was in Spanish territory and had been the subject of negotiation between Spain and the United States.

Galveston was in the disputed territory on the Spanish and United States boundary.

It appears that " among the avowed projects of the persons who had occupied Amelia Island was that of making a conquest of East and West Florida, professedly for the purpose of establishing there an independent government. . . . The greater part of West Florida being in the actual possession of the United States, this project involved in it designs of direct hostility against them ; and, as the express object of the resolution and Act of January 15, 1811, was to authorize the President to prevent the province of East Florida from passing into the hands of any foreign Power, it became the obvious duty of the President to exercise the authority vested in him by that law."

Moreover, it was " a matter of public notoriety that two of the persons who had successively held the command at Amelia Island, whether authorized themselves by any Government or not, had issued commissions for privateers, as in the name of the Venezuelan and Mexican Governments, to vessels fitted out in the ports of the United States, and chiefly manned and officered by United States citizens."

The Galveston establishment was formed by a Commodore Oury, principally for the purpose of privateering and slave dealing. He issued commissions in the name of the Mexican Republic, and fitted out his vessels in United States ports, and brought his prizes to Galveston, where they were condemned by a fictitious admiralty court, and the prize vessels and cargoes afterwards sent to the United States for sale. Some of these prizes were restored to the original owners by process in the Louisiana district court.

A United States force was despatched against both these establishments, and in December 1867 they were forcibly suppressed. Spain remonstrated against the occupation of Amelia Island, but the United States Government stated that it was a temporary measure which had been carried out in the public interest, and was not intended as an infraction of any Spanish rights of Sovereignty.

In 1818 a further Foreign Enlistment Act was passed (April 3) repealing and revising the Acts of 1794, 1797, and 1817. This Act is the one now in force.

The principal points in which it differs from the Act of 1794 are as follows :

Sect. 1. Instead of the words " foreign Prince or State," the words are " foreign Prince, State, Colony, district, or people," and so throughout the Act.

Sect. 2. Omits the last paragraph of indemnity to the informer.

Sect. 3. Has " within the limits of the United States," instead of " within any of the ports, harbours, bays, rivers, or other waters." The penalty is made 10,000 dollars instead of 5,000 dollars.

Sect. 4. Has no corresponding clause in the Act of 1794. It provides against the equipment of vessels " without the limits " of the United States to commit hostilities " upon the citizens of the United States or their property," under penalty of a fine of 10,000 dollars or imprisonment for not more than ten years.

This clause is similar in its general provisions to the Act of 1797, with the material difference that that Act provided for the punishment of an offence committed " without the limits " of the United States upon " the citizens or property of any Prince or State with whom the United States are at peace, or upon the citizens of the United States or their property."

Sect. 5. Is the same as Sect. 4 in the Act of 1794, with the addition of " or by changing those on board of her for guns of a larger calibre " after the words

American  
State  
Papers,  
vol. iv. p. 108.

American  
State  
Papers, vol.  
iv. p. 132.

American  
State  
Papers, vol.  
iv. p. 183.

" United  
States  
Statutes at  
Large," vol.  
iii. page 417.  
" British and  
Foreign  
State  
Papers,"  
vol. ix. p.  
382.

United  
States  
Statutes at  
Large,  
vol. iii.  
p. 370.  
" British  
and Foreign  
State  
Papers,"  
vol. iv.  
p. 639.

American  
State  
Papers, vol.  
iv. p. 130.

"by adding to the number of the guns in such vessel."

Sect. 6 (same as Sect. 5). The penalty is made *one* year instead of *three* years' imprisonment.

Sect. 7 and 8. Same as Sect. 8 and 9.

Sect. 10 and 11. The "bonding" clauses are nearly the same as those in the Act of 1817, and as they are of importance as constituting the chief difference between the English and American Foreign Enlistment Acts, are here given at length:—

"Sect. 10. And be it further enacted, that the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any Colony, district, or people, with whom the United States are at peace.

"Sect. 11. And be it further enacted, that the Collectors of the Customs be, and they are hereby respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property, of any foreign State, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this Act."\*

Sect. 12. Repeals the Acts of 1794 and 1797.

A few more decisions in the Supreme Court remain to be noticed.

The "Divina Pastora," February 1819.

*Judgment.*—The Government of the United States having recognised the existence of a civil war between Spain and her Colonies, our Courts are bound to recognize as lawful those acts which war authorizes and the new Government in South America.

Captures made under their commission must be treated by us like other captures.

Their legality cannot be determined in our Courts, unless made in violation of our neutrality.

The pleadings being defective in form the cause was remanded to the Circuit Court. The result does not appear.

February 1819, the "Estrella."

*Judgment.*—In the absence of any Act of Congress on the subject, the Courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of their neutrality.

Vessel and cargo restored with costs.

February 1820. "La Amistad de Rues."

*Judgment.*—In cases of violation of our neutrality by any of the belligerents, if the prize comes voluntarily within our territory, it is restored to the original

owners by our Courts. But their jurisdiction for this purpose under the law of nations extends only to restitution of the specific property, with costs and expenses during the pendency of the suit, and does not extend to the infliction of vindictive damages or compensation for plunderage, as in ordinary cases of marine torts.

In delivering judgment, Chief Justice Story observed: "We entirely disclaim any right to inflict such damages, and consider it no part of the duty of a neutral nation to interpose, upon the mere footing of the law of nations, to settle all the rights and wrongs which may grow out of a capture between belligerents. Strictly speaking, there can be no such thing as a marine tort between the belligerents. Each has an undoubted right to exercise all the rights of war against the other, and it cannot be a matter of judicial complaint that they are exercised with severity, even if the parties do transcend those rules which the customary laws of war justify. At least, they have never been held within the cognizance of the prize tribunals of neutral nations. The captors are amenable to their own Government exclusively for any excess or irregularity in their proceedings, and a neutral nation ought no otherwise to interfere than to prevent captors from obtaining any unjust advantage by a violation of its neutral jurisdiction. Neutral nations may, indeed, inflict pecuniary or other penalties on the parties for any such violation; but it then does it professedly in vindication of its own rights, and not by way of compensation to the captured. When called upon by either of the belligerents to act in such cases, all that justice seems to require is that the neutral nation should fairly execute its own laws and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property if found within its own ports; but beyond this it is not obliged to interpose between the belligerents. If, indeed, it were otherwise, there would be no end to the difficulties and embarrassments of neutral prize tribunals. They would be compelled to decide, in every variety of shape, upon marine trespasses *in rem* and *in personam* between belligerents, without possessing adequate means of ascertaining the real facts, or of compelling the attendance of foreign witnesses, and thus they would draw within their jurisdiction almost every incident of prize. Such a course of things would necessarily create irritations and animosities, and very soon embark neutral nations in all the controversies and hostilities of the conflicting parties. Considerations of public policy came, therefore, in aid of what we consider the law of nations in this subject, and we may add that Congress in his legislation has never passed the limit which is here marked out."

The action was brought on appeal from the district court which had ordered restitution and awarded damages against the captors on the ground of an illegal augmentation of force at New Orleans. The claimants having failed to prove such an augmentation of force before the Supreme Court, the sentence of the district court was reversed, and the prize restored to the captor (the Venezuelan privateer "La Guerrière") and the damages disallowed, as stated above.

February 1822. The "Santissima Trinidad" and the "St. Ander."

This was a claim preferred by the Spanish consul, as representing the Spanish owners, for "Eighty-nine bales of cochineal, two bales of jalap, and one box of vanilla, originally constituting part of the cargoes of the Spanish ships 'Santissima Trinidad' and 'St. Ander,' and alleged to have been unlawfully and piratically taken out of those vessels on the high seas, by a squadron consisting of two armed vessels, called the 'Independencia del Sud' and the 'Altravida,' and manned and commanded by persons assuming themselves to be citizens of the United Provinces of the Rio de la Plata."

Chief Justice Story thus stated the case as regarded the "Independencia." "She was originally built and equipped at Baltimore as a privateer during the

Curtis, vol. iv. page 345.

Curtis, vol. iv. page 466.

Ibid, vol. iv. page 673.

Curtis, vol. v. p. 239.

\* Mr. Bemis, in his pamphlet on "American Neutrality," published at Boston in 1866, remarks: "To my own appreciation both of these 'bonding' clauses, as they are called, had most of their neutral virtue taken out of them, when Congress made them applicable. (1.) To 'vessels belonging wholly 'or in part to citizens of the United States,' thereby leaving 'foreigners at liberty to clear unneutrally armed ships (see 'project of the Act, Ann. Con. 1816-17, p. 477 sec. 1); (2) 'When they limited the bond so as only to prevent 'such owners' from cruising or committing hostilities, instead of making the bond guard against belligerent employment of the vessel by 'any person to whom they [such owners] may sell or pretend to sell such vessel.' (Ann. Cong. 1816-17, p. 478 sec. 2); and (3) by requiring that any vessel to be subject to detention, must have on board 'a cargo principally consisting of arms and munitions of war,' thus letting go at large a vessel armed to the teeth, and 'manifestly built for warlike purposes,' provided she adopts the precaution of taking no such cargo with her, and is owned by foreigners."

"late war with Great Britain, and was then rigged as a schooner and called the "Mammoth," and sailed against the enemy. After the peace she was rigged as a schooner and sold by her original owners. In January 1816, she was loaded with a cargo of munitions of war, by her new owners (who are inhabitants of Baltimore), and being armed with 12 guns, constituting a part of her original armament. She was despatched from that port under the command of the claimant on a voyage, ostensibly to the north-west coast, but in reality to Buenos Ayres. By the written restrictions given to the supercargo on this voyage, he was authorized to sell the vessel to the government of Buenos Ayres if he could obtain a suitable price. She duly arrived at Buenos Ayres, having exercised no act of hostility but sailed under the protection of the American flag during the voyage. At Buenos Ayres, the vessel was sold to Captain Chaytor and two other persons; and soon afterwards she assumed the flag and character of a public ship, and was understood by the crew to have been sold to the government of Buenos Ayres; and Captain Chaytor made known these facts to the crew, and asserted that he had become a citizen of Buenos Ayres, and had received a commission to command the vessel as a national ship, and invited the crew to enlist in the service, and the greater part of them accordingly enlisted. From this period, which was in May 1816, the public functionaries of our own and other foreign governments at that port, considered the vessel as a public ship of war, and such was her avowed character and reputation. No bill of sale of the vessel to the government of Buenos Ayres is produced, and a question has been made principally from this defect in the evidence, whether her character as a public ship is established. It is not understood that any doubt is expressed as to the genuineness of Captain Chaytor's commission, nor as to the competency of the other proofs in the cause introduced to corroborate it. The only point is, whether, supposing them true, they afford satisfactory evidence of her public character. We are of opinion that they do. In general the commission of a public ship, signed by the proper authorities of the nation to which she belongs, is complete proof of her national character. \* \* \* The commission of a public ship when duly authenticated, so far at least as foreign courts are concerned, imports absolute verity and the title is not examinable. \* \* \*

"There is another objection urged against the admission of this vessel to the privileges and immunities of a public ship. \* \* \* It is that Buenos Ayres has not yet been acknowledged as a sovereign independent government by the executive or legislature of the United States, and therefore is not entitled to have her ships of war recognized by our courts as national ships. We have in former cases had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same right of asylum and intercourse. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war, and entitled to be respected in the exercise of those rights. \* \* \*

"The next question growing out of this record is, whether the property in question was captured in violation of our neutrality, so that restitution ought, by the law of nations, to be decreed to the belligerents. Two grounds are relied upon to justify restitution—1. That the 'Independencia' and 'Altravida' were originally equipped, armed, and manned as vessels of war in our ports. 2. That there was an illegal augmentation of the force of the 'Independencia' within our ports. \* \* \*

"The question as to the original illegal armament and outfit of the 'Independencia' may be dismissed in a few words. It is apparent, that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband, indeed, but in no

shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemnable as good prize, for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign parts for sale. It is a commercial venture, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation. Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a *bonâ fide* sale (and there is nothing in the evidence before us to contradict it) there is no pretence to say that the original outfit in the voyage was illegal, or that a capture made after the sale, for that cause alone, invalid."

On the second point, the Court found that there had been a subsequent illegal augmentation of force both of the "Independencia" and of the "Altravida," and on this ground the prize was ordered to be restored to the Spanish claimants.

February 1822. The "Gran Para."

*Judgment.*—It is firmly settled that if captures are made by vessels which have violated our Neutrality Acts, the property may be restored if brought within our territory.

Curtis, vol. 1, page 302.

A vessel armed and manned in one of our ports and sailing thence to a belligerent port, with the intent thence to depart on a cruise with the crew and armament obtained here, and so departing and capturing belligerent property, violates our Neutrality Laws, and her prizes coming within our jurisdiction will be restored.

A *bonâ fide* termination of the cruise for which the illegal armament was here obtained puts an end to the disability growing out of the violation of our neutrality laws, which does not attach indefinitely, but a colourable termination has no such effect.

The prize, bullion taken out of the Portuguese vessel "Gran Para," and brought to Baltimore in September 1818 in the capturing privateer "Irresistible," sailing under the Artigan flag, was restored to the Portuguese claimants, with costs.

February, 1823. "La Nereyda."

This was an action brought by the Spanish Consul for the recovery of the brig "Nereyda."

Curtis, vol. 1, p. 374.

The "Nereyda" was a Spanish ship-of-war, captured in 1818 by the privateer "Irresistible," of which John Daniels was the commander and Henry Childs lieutenant, and which had been illegally equipped at Baltimore. The "Nereyda" was carried to the island of Margaritta under the command of Childs, as prize master. It was alleged that at Margaritta the "Nereyda" was condemned as prize, and sold to one Franchesche; but no proof of the sale was adduced; and it appeared that during the short time she remained at Margaritta she was under the control of Childs, who obtained a commission as a privateer for her from the Venezuelan Government, changed her name to the "El Congreso de Venezuela," and sailed back in her to the United States, where she was eventually libelled at Baltimore.

Childs opposed the claim of the Spanish Consul by a counter-claim on behalf of the alleged purchaser Franchesche.

The case was brought up on appeal from the District Court. Time was allowed to the respondent to produce a copy of the judgment of the Margaritta prize court, and also to show that the sale there was a real one, and Franchesche a *bonâ fide* purchaser.

Childs failed to produce this evidence, and it having been shown that although four years had elapsed since the pretended sale, Franchesche had never asserted any rights over the vessel, which had continued in the possession of Childs and Daniels since the capture, the decree of the District Court was reversed, and the vessel restored to the Spanish Consul.

United States v. Quincy, January 1832.

Curtis, vol. 1, p. 180.

The question before the Court was as to the instructions which ought to have been given to the jury of the circuit court for the Maryland district in a prose-

cution against John D. Quincy for a violation of the Act of 1818.

In December 1828 the "Bolivar," a small vessel of 70 tons, sailed for Baltimore from St. Thomas under the command of Quincy, with her owner, Armstrong, on board. At St. Thomas Armstrong fitted her out as a privateer under the name of "Las Damas Argentinas," to cruise under the Buenos Ayres flag against Brazil. Quincy continued to command her and made some prizes. He afterwards returned to the United States, and the prosecution in question was instituted against him for being concerned in fitting out the "Bolivar."

*Judgment.*—"It is not necessary that the jury should believe or find that the 'Bolivar,' when she left Baltimore and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the Defendant guilty of the offence charged in the indictment.

"The first instruction, therefore, prayed on the part of the defendant must be denied, and that on the part of the United States given.

"The second and third instructions asked on the part of the Defendant were:—

"That if the jury believe that when the 'Bolivar' was fitted and equipped at Baltimore the owner and equipper intended to go to the West Indies in search of funds, with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a privateer, but intended, when he equipped her, to go to the West Indies, to endeavour to raise funds to prepare her for a cruise, then the Defendant is not guilty.

"Or if the jury believe that when the 'Bolivar' was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a privateer, but had a wish so to employ her, the fulfilment of which wish depended on his ability to obtain funds in the West Indies for the purpose of arming and preparing her for war, then the defendant is not guilty.

"We think these instructions ought to be given. The offence consists principally in the intention with which the preparations were made. These preparations, according to the very terms of the act, must be made within the limits of the United States, and it is equally necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. And this must be a fixed intention, not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide. It is the material point on which the legality or criminality of the act must turn, and decides whether the adventure is of a commercial or warlike character.

"The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owner to give security, (as was done in the present case) that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States.

"The collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable that such vessels are intended to be employed by the owner to commit hostilities against some foreign power at peace with the United States.

"All the latitude, therefore, necessary for commercial purposes, is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war."

Other cases might be quoted, but it is only intended to convey a general idea of the ruling of the United States Courts in carrying out the Neutrality Laws. There does not appear to have occurred, either during the French war or the South American war, any case similar to the "Alabama," where the vessel was dispatched to an unoccupied island, and there met by another vessel bringing her armament and crew. This no doubt is owing in some

measure to the difficulty there might have been in carrying out such a project with sailing vessels.

The Spanish and Portuguese claims arising out of the system of privateering pursued by American citizens under the flags of the revolted colonies have recently been so fully discussed in the communications between Lord Russell and Mr. Adams respecting the "Alabama" and "Shenandoah" cases that a short account of the correspondence will probably be sufficient for the purposes of the present Memorandum.

The treaty between Spain and the United States of America of the 27th of October 1795, contained the following stipulation:

"Article XIV. No subject of his Catholic Majesty shall apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the said United States, or against the said citizens, people or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any prince or state, with which the United States shall be at war.

"Nor shall any citizen, subject, or inhabitant of the said United States apply for, or take any commission or letters of marque for arming any ships to act as privateers against the subjects of his Catholic Majesty, or the property of any of them, from any prince or state with which the said king shall be at war. And if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate."

When diplomatic relations between Spain and the United States, which had been suspended in 1808, were renewed in 1815, the Spanish minister addressed a note to the Secretary of State containing proposals as the basis of negotiation for the settlement of the various differences in dispute between the two countries.

The Chevalier de Onis mentions as one of the points on which an understanding was urgent, "That the president will be pleased to give the necessary orders to the collectors of customs not to admit into the ports of the United States vessels under the insurrectionary flag of Carthagena, of the Mexican Congress of Buenos Ayres, or of the other places which have revolted against the authority of the King, my master, nor those coming from them, that they should not permit them to land, or to sell in this country the shameful proceeds of their piracy or atrocities, and much less to equip themselves in these ports, as they do, for the purpose of going to sea, to destroy and to plunder the vessels which they may meet with under the Spanish flag. This tolerance, subversive of the most solemn stipulations in the treaties between Spain and the United States, and diametrically opposed to the general principles of public security and good faith, and to the laws of nations produces the most melancholy effects on the interest and the prosperity of the subjects of His Catholic Majesty. Certain it is that neither Carthagena, nor any other place in the Spanish dominions in this hemisphere, which has revolted, can be in communication with any power friendly to Spain, since neither on its part, nor on that of any other Government, has their independence been acknowledged; and it is, consequently, an offence against the dignity of the Spanish monarchy, and against the sovereignty of the King, my master, to admit vessels from such places, manned and commanded by insurgents, and armed in the dominions of this confederation; particularly as they are all pirates who do not respect any flag, are justly considered the disgrace of the seas, and are execrated by all nations."

(The Chevalier de Onis to the Secretary of State December 30, 1815.)

Mr. Monroe replied, "With regard to your third demand the exclusion of the flag of the revolting provinces, I have to observe that, in consequence of the unsettled state of many countries, and repeated changes of the ruling authority in each, there being at the same time several competitors, and each party bearing his appropriate flag, the President

Parliamentary Papers, "North America," No. 1, 1861," &c.

American State Papers, vol. iv. p. 423. British State Papers, vol. iii, p. 109.

American State Papers, vol. iv. p. 423. British State Papers, vol. iii, p. 119.

"thought it proper, some time past, to give orders to the collectors not to make the flag of any vessel a criterion or condition of its admission into the ports of the United States." And he added—

"What will be the final result of the civil war which prevails between Spain and the Spanish provinces in America, is beyond the reach of human foresight. It has already existed many years, and with various success, sometimes one party prevailing, and then the other. In some of the provinces the success of the revolutionists appears to have given to their cause more stability than in others. All that your government had a right to claim of the United States was, that they should not interfere in the contest, or promote, by any active service, the success of the revolution, admitting that they continued to overlook the injuries received from Spain, and remained at peace. This right was common to the colonists. With equal justice might they claim that we would not interfere to their disadvantage; that our ports should remain open to both parties, as they were before the commencement of the struggle; that our laws regulating commerce with foreign nations should not be changed to their injury. On these principles the United States have acted."

(Mr. Monroe to the Chevalier de Onis, January 19, 1816.)

On the 10th of June 1816, Mr. Monroe forwarded to the Chevalier de Onis a copy of a report from M. Dick, attorney of the United States for the district of Louisiana, dated March 1, 1816, denying the Chevalier's allegations of the open enlistment of men and equipment of expeditions to serve against Spain. "A regard to truth makes it necessary to say that what is alleged respecting the arming and fitting out of vessels within the waters of Louisiana, to be employed in the service of the revolutionary Governments against the subjects or property of the King of Spain, is unfounded. At no period since the commencement of the struggle between the Spanish colonies and the mother country have vessels to be employed in the service of the colonies been permitted to fit out and arm or to augment their force at New Orleans or elsewhere within the State of Louisiana.

"On the contrary, it is notorious that at no one point of duty have the civil and military authorities of the United States directed more strenuously, or it is believed, more successfully, their attention than to the discovering and suppression of all attempts to violate the laws in these respects. Attempts to violate them by fitting out and arming and by augmenting the force of vessels, have no doubt been frequent, but certainly in no instance successful, except where conducted under circumstances of concealment that eluded discovery and almost suspicion, or where carried on at some remote point of the coast beyond the reach of detection or discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterwards discovered that they had been committed, the persons engaged, as far as they were known, have been prosecuted, while the vessels fitted out, or attempted to be fitted out, have been seized and libelled under the Act of the 5th of June 1794; and when captures have been made by vessels thus fitted out and armed, or in which their force was augmented or increased within our waters, where the property taken was brought within our jurisdiction, or even found upon the high seas by our cruisers and brought in, it has been restored to the original Spanish owners, and, in some instances, damages awarded against the captors."

Mr. Dick appended a list showing that during the year 1815 seven persons had been prosecuted and six vessels libelled under the Act of 1796 (of which three were condemned) and prizes restored to the Spanish claimants in nine cases.

It does not appear, however, that the measures adopted by the officers of the United States Government, referred to by Mr. Dick, were efficacious in preventing violations of the Foreign Enlistment Act

to the satisfaction of the Spanish Minister, for on the 2d of January 1817, he addressed a further representation to the Secretary of State: "The mischiefs resulting from the toleration of the armament of privateers in the ports of this Union, and of bringing into them, with impunity, the plunder made by these privateers on the Spanish trade, for the purpose of distributing it amongst those merchants who have no scruple in engaging in these piracies, have arisen to such a height that I should be wanting in my duty if I omitted to call your attention again to this very important subject. It is notorious that although the speculative system of fitting out privateers, and putting them under a foreign flag, one disavowed by all nations, for the purpose of destroying the Spanish commerce, has been more or less pursued in all the ports of the Union, it is more especially in those of New Orleans and Baltimore, where the greatest violations of the respect due to a friendly nation, and, if I may say so, of that due to themselves, have been committed; whole squadrons of pirates having been out from thence, in violation of the solemn treaty existing between the two nations, and bringing back to them the fruits of their piracies, without being yet checked in these courses, either by the reclamations I have made, those of His Majesty's consuls, or the decisive and judicious orders issued by the President for that purpose." M. de Onis complains in this note of the proceedings of several privateers at Baltimore, New York, Norfolk, and New Orleans.

No answer seems to have been returned to M. de Onis note.

In January, February, and March, M. de Onis sent in 12 other notes in the same strain, and on the 28th of March the Acting Secretary of State informed him that enquiry would be made and "adequate redress and punishment enforced should it appear that the laws have been infringed by any of the acts complained of."

Five more notes from M. de Onis followed principally complaining of the captures effected by the "Independencia del Sud" and "Altravida" (see case of "Santissima Trinidad," ) and the asylum afforded to those vessels as well as to the "Congress," "Mongore," and other privateers in American ports.

On the 22d of April the acting Secretary of State inquired whether M. de Onis had power to conclude a treaty, as, if not, it was "deemed improper to entertain discussions of the kind invited by" his late notes.

M. de Onis continued his representations in eight more notes, in one of which addressed to Mr. J. Q. Adams, dated the 2d of November 1817, he says, "It is very disagreeable to me to have to repeat to you, sir, what unfortunately I have been several times under the necessity of submitting to the President through the medium of your predecessors; namely, that the Act of Congress of the 3d of March 1817, has in no wise lessened the abuses by which the laws are evaded, and render entirely illusory the laudable purposes for which they were enacted. From the greater part of the ports of these states, there frequently sail a considerable number of vessels, with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the collectors of customs say that they have not at their disposition the naval force necessary to effect it; on the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the Union, and not only supply themselves with all necessaries, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are in reality nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent powers."

In May 1818, M. de Onis, referring to a French expedition prepared at Philadelphia under General

British  
State  
Papers, vol.  
v. p. 365.

American  
State  
Papers, vol.  
iv. p. 481.

British  
State  
Papers, vol.  
v. p. p. 366-  
379.

State  
Papers, vol.  
v. p. p. 380-  
397.

Ibid, p. 386

Ibid, pp. 386-  
415.

American  
State  
Papers, vol.  
iv. p. 199.



British  
State  
Papers, vol.  
vi. p. 225.

Lallemand, and which was supposed to be intended to operate against Mexico, stated to Mr. Adams "I would have considered myself dispensed from the necessity of again pressing this subject on your attention, if it had appeared possible for me to restrain these armaments by the employment of judicial means, but unfortunately the Act of Congress of the 20th of April last, for preserving neutrality with foreign nations, and others already in force although highly judicious, are easily eluded; and although these practices are public and notorious throughout the whole Union, His Majesty's consuls advise me that through a deficiency of evidence they cannot be restrained by a regular application of the law. (The Chevalier de Onis to Mr. Adams, May 7, 1818).

On the 9th of June 1818 M. de Onis represented that there were then at Baltimore four privateers, the "Independencia del Sud," the "Mongore," the "Republicano," and the "Alerta," three of which were notoriously fitted out there, and the fourth was a schooner captured from Spanish owners. All these vessels were commanded by Americans, and manned, with scarcely an exception, by American crews: that, however clear the facts might be to everybody, it was in vain to seek evidence to prove them, as "a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest."

M. de Onis continued his complaints during the summer of 1818, and called attention particularly to the purchase and equipment of two privateers at New York.

Mr. Adams at length replied as follows:—

"I have received your letters of the 27th ultimo and 5th instant, with their respective inclosures, all of which have been laid before the President. With regard to the two vessels alleged to have been equipped at New York, for the purpose of cruising under the flag of Buenos Ayres, against Spanish subjects, the result of the examination which has taken place before a Judge of the Supreme Court of the United States has doubtless convinced you that no prosecution commenced by the Government of the United States against the persons charged with a violation of their laws and their neutrality could have been necessary or useful to you, no transgression of the law having been proved against them.

"I am further instructed by the President to assure you of the satisfaction with which he has seen, in the last paragraph of your letter, your expectation of being speedily enabled to make proposals containing the bases of a treaty which may adjust, to mutual satisfaction, all the existing differences between our two nations, and his earnest hope that this expectation, in the fulfilment of which this Government have confided, and adopted measures corresponding with it, may be realized at an early day."

Negotiations were shortly afterwards set on foot for the conclusion of a treaty between the two countries, for the settlement of the differences which had so long existed between them, and among the proposals put forward by the Spanish Government were a mutual renunciation of "all claims for damages or injuries which they themselves or their respective subjects or citizens may have suffered," and the adoption of such laws or measures as might be required "to remedy and cut up by the roots, the abuses which, contrary to the law of nations, and contrary to what is expressly stipulated in the treaty of 1795, above cited, daily occur in some ports of this union, in consequence of the vague and arbitrary interpretation which it seems the measures until now adopted are susceptible of, and by which means the law is eluded."—(Mr. Adams to the Chevalier de Onis, October 24, 1818.)

The United States Government assented to the mutual renunciation of claims, but refused the other proposal, as they considered there was no occasion for any new laws or declarations. "Of the many com-

plaints which you have addressed to this Government in relation to alleged transactions in our ports, the deficiency has been, not in the meaning or interpretation of the treaty, but in the proof of the facts which you have stated, or which have been reported to you, to bring the cases of complaint within the scope of the stipulations of the treaty."—(Mr. Adams to M. de Onis, October 31, 1818).

To this the Spanish Minister rejoined:—

"Whatever may be the forecast, wisdom, and justice conspicuous in the laws of the United States, it is universally notorious that a system of pillage and aggression has been organized in several ports of the Union against the vessels and property of the Spanish nation; and it is equally so, that all the legal suits hitherto instituted by His Catholic Majesty's Consuls, in the courts of their respective districts, for its prevention, or the recovery of the property, when brought into this country, have been, and still are, completely unavailing. The artifices and evasions by means of which the letter of the law has, on these occasions, been constantly eluded, are sufficiently known, and even the combination of interests, in persons who are well known, amongst whom are some holding public offices. With a view to afford you, and the President, more complete demonstration of the abuses, aggressions, and piracies alluded to, I inclose you correct lists, extracted from authentic documents deposited in the archives of this Legation, exhibiting the number of privateers or pirates fitted out in the United States against Spain, and of the prizes brought by them into the Union, as well as of those sent to other ports, together with the result of the claims made by the Spanish Consuls, in the Courts of this country. Among them you will find the case of two armed ships, the "Horatio" and "Curiazo," built at New York, and detained by His Majesty's Consul there, on the ground of their having on board 30 pieces of cannon concealed, with their carriages, and a crew of 160 men. On which occasion it was pretended that it could not be proved that these guns were not an article of commerce, and they finally put to sea without them, the extraordinary number of officers and crew passing for passengers. The number of privateers, or pirates, fitted out or protected in the ports of this Republic, as well as of the Spanish prizes made by them, far exceeds that contained in the within lists; but I only lay before your Government those of which I have certain and satisfactory proofs. The right of Spain to an adequate indemnity for all the spoiliations committed by these privateers, or pirates, on the Crown and subjects of His Catholic Majesty, is undeniable; but I now submit it to your Government, only to point out the extreme necessity of putting an end to these continued acts of hostility and depredation, and of cutting short these enormous and flagrant abuses and evils, by the adoption of such effectual precautions and remedies as will put it out of the power of cupidity or ingenuity to defeat or elude them. In vain should we endeavour amicably to settle and accommodate all existing differences, and thus establish peace and good understanding between the two nations, if the practice of these abuses, and the course of these hostilities and piracies on the commerce and navigation of Spain, should, as heretofore, continue uninterrupted in the United States."—(The Chevalier de Onis to Mr. Adams, November 16, 1818.)

The Secretary of State in reply expressed the readiness of his Government to continue the negotiations, provided the Spanish Minister would consent to waive a certain portion of his proposition (relating to the transactions in Florida, and the western boundary): but added, that if he did not feel at liberty to proceed with the negotiations on those terms, he (Mr. Adams) was ready to exchange with him the ratifications of the Convention of 1802. (Mr. Adams to M. de Onis, November 30, 1818.)

On the 22nd of February, 1819, a treaty of Amity, Settlement, and Limits, was concluded at Washington, between the United States of America and his Catholic Majesty, and the following is a statement of the claims which each party consented to renounce:

British  
State  
Papers, vol.  
vi. p. 235.

British  
State  
Papers, vol.  
vi. p. 226.

Ibid, vol. vi.  
p. 262.

M. de Onis  
to Mr.  
Adams,  
October 24,  
1818.  
State  
Papers, vol.  
v. p. 265.

Ibid, pp.  
267-277.

British  
State  
Papers, vol.  
vi. p. 281.

State  
Papers, vol.  
vi. p. 291.

State  
Papers, vol.  
viii. p. 580.

Article IX. "The two High Contracting Parties animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be for ever maintained between them reciprocally, renounce all claim for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this Treaty.

"The Renunciation of the United States will extend,—

"1. To all the injuries mentioned in the Convention of 11th August 1802.

"2. To all claims on account of prizes made by French privateers and condemned by French Consuls within the territory and jurisdiction of Spain.

"3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802.

"4. To all claims of citizens of the United States upon the Spanish Government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State or to the Minister of the United States in Spain since the date of the Convention of 1802, and until the signature of this Treaty.

"The Renunciation of His Catholic Majesty extends,—

"1. To all the injuries mentioned in the Convention of 11th August 1802.

"2. To the sums which His Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

"To all injuries caused by the expedition of Miranda, which was fitted out and equipped at New York.

"To all claims of Spanish subjects upon the Government of the United States, arising from unlawful seizures at sea or within the ports and territorial jurisdiction of the United States.

"Finally, to all the claims of subjects of His Catholic Majesty upon the Government of the United States, in which the interposition of His Catholic Majesty has been solicited before the date of this Treaty, and since the date of the Convention of 1802, or which may have been made to the Department of Foreign Affairs of His Majesty or to his Minister in the United States.

"And the High Contracting Parties respectively renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

"The United States will cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."

This treaty concludes the published correspondence respecting the Spanish claims.

The correspondence between Portugal and the United States will be found in a convenient shape for reference in the Appendix to the "Alabama" papers re-published by Messrs. Longmans, Green & Co. in 1867.

It was laid before Congress on the 4th of February 1852, together with the correspondence relating to the claims of United States citizens in Portugal arising out of the case of the "General Armstrong."

See also British State Papers, vol. 222. The following is the succinct account of this correspondence given in Lord Russell's note to Mr. Adams of the 30th of August 1865 (Parliamentary Paper, North America, No. 1, 1866, p. 26).

"The correspondence to which I refer began in December 1816, and closed with a letter of the Portuguese Minister in November 1850. It cannot be pretended that the reclamations of a friendly Power attending over 34 years did not receive the gravest attention of the American Government.

"In his first letter the Portuguese Envoy at Washington complains that Mr. Taylor, of Baltimore, an

American citizen, had directed Captain Fish, of the 'Romp,' an American ship, to cruise as a privateer under the insurgent colours of Buenos Ayres against the subjects of Portugal.

"He adds, 'The 18th of last month (November) the frigate 'Clifton,' Captain Davis, armed with 32 guns of various calibres, and a crew of 200 men, sailed from Baltimore for Buenos Ayres. This ship anchored below that port, where it has remained for about a fortnight or more waiting for the American ship 'Independence of the South,' armed with 16 guns, and for the ships 'Romp,' 'Tachahoe,' 'Montezuma,' and 'Spanker,' and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the Eastern and Western Seas of South America, under the insurgent colours of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fish, and that they will act hostilely against Portuguese ships.'

"The Portuguese Envoy, Joseph Correa de Serra, prays for an amendment of the law of the United States with a view to render it more efficient in such cases. A law having been passed by Congress for this purpose, the Portuguese Envoy, in May 1817, requests that the President will desire the United States' officers on the outposts to use greater vigilance.

"In March 1818 he complains that three Portuguese ships have been captured 'by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colours.'

"In October of the same year the Portuguese Envoy complains that a Portuguese prize is fitting in the Patuxent to cruise against Portuguese commerce.

"In November of the same year the Portuguese Minister states to Mr. Adams that, obliged by his duty to inquire into the nature of the armed ships that had of late insulted the flag of his sovereign, and committed incalculable depredations on the property of his subjects, he had found, to his sorrow, multiplied proofs that many of them were owned by citizens of the United States, and had been fitted in the ports of the Union. He goes on to complain of the difficulties in the way of prosecutions, but compliments the President on his 'honourable earnestness.'

"In December of the same year the Portuguese Minister complains of the armed vessel 'Irresistible,' which had been committing 'depredations and unwarrantable outrages on the coast of Brazil.' He says, it is proved by depositions that John Daniels, the commander of the ship, is an American, and all the crew are Americans. He prays that, if the ship should come into an American port, means may be taken to bring the said captain and crew within reach of the laws made to punish such scandalous proceedings.

"In March 1819 M. Correa de Serra states, as Minister of his Sovereign, that Artigas, whose flag is frequently waving in the port of Baltimore, and which is carried by Portuguese prizes in the ports of the Union, has been expelled far from the countries which could afford him the power of navigating, and has not a foot length of sea-shore in South America where he can show himself. He prays that the Artigan flag may be declared illegal.

"In November 1819, after expressing his gratitude for the proceedings of the Executive, the same Minister complains that the evil is rather increasing. He is in possession of 'a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which had been captured during a period of profound peace. One city alone on the coast of the United States had twenty-six armed ships which preyed on Portuguese commerce, "and a week ago three armed ships of this kind were in that port waiting for a favourable occasion for sailing on a cruise.'

"In June 1820, the Portuguese Minister complains that a Portuguese prize had been sold by auction at Baltimore to Captain Chase (a notorious privateersman), and was to be immediately fitted out as a privateer to cruise against the Portuguese Indiamen.

Executive  
Documents,  
House of  
Representa-  
tives, No. 53,  
32d Con-  
gress, 1st  
Session.

"In July of the same year, the Portuguese Minister sends a list of "the names and value of nineteen Portuguese ships and their cargoes, taken by *private armed ships, fitted in the ports of the Union, by citizens of those States.*" His Sovereign wishes the affair to be treated with that candour and conciliating dignified spirit which becomes two Powers who feel a mutual esteem, and have a proper sense of their moral integrity. 'In this spirit I have the honour to propose to this Government to appoint Commissioners on their side, with full powers to confer and agree with His Majesty's Ministers on what reason and justice demand.'

"In December 1820 the Chevalier Amado Grehon transmitted to Mr. Adams a copy of twelve claims, with the value of the ships, desiring him to add them to the list furnished by the Chevalier Correa de Serra.

"In April 1822 the same Minister repeats the proposal made in July 1820, 'of having recourse to Commissaries chosen by both Governments for the purpose of arranging the indemnities justly due to Portuguese citizens for the damage which they have sustained by reason of piracies supported by the capital, and the means of citizens of the United States; an essential condition which, in this way repairing the past, secures also the future.'

"On the 25th of May 1850, the Chargé d'Affaires of Portugal writing to the Secretary of State of the United States declares, 'The undersigned is authorized to come to an understanding with the new Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and decision of the Commissioners or Arbitrators appointed by the American Government on the one part, and the Undersigned on behalf of Her Majesty's Government on the other,' &c.

"Having thus related the complaints of the Portuguese Government during the years which elapsed from 1816 to 1822, and from 1822 to 1850, I will now give from the organs of the United States the answers which that Government gave to these solemn and reiterated complaints.

"In March 1817, the Secretary of State transmitted to the Portuguese Minister at Washington an Act of Congress passed on the 3rd of that month to preserve more effectually the neutral relations of the United States. On the 14th of March 1818, in answer to a letter complaining of the capture of three Portuguese ships by privateers, Mr. Adams says:—

"The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

"The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are Courts of Admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal law of nations the obligations of the American Government extend no further.'

"The Secretary of State in subsequent letters promises to prosecute in the United States' Courts

persons chargeable with a violation of the laws of this United States in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of the Queen of Portugal.

"To the proposal to appoint Commissioners made in July 1820, the United States' Secretary of State, on the 30th of September of the same year, replies as follows:—

"The proposal contained in your note of the 16th of July last has been considered by the President of the United States with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this Government is animated in its intercourse with all foreign Governments, and particularly with yours. I am directed by him to inform you that the appointment of Commissioners to confer and agree with the Ministers of His Most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States, *nor with any practice usual among civilized nations.*

"He proceeds to say:—

"If any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible.

"To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States has been to observe a perfect and impartial neutrality.'

"The same reply is again given to Chevalier Amado Grehon in a letter dated the 30th of April 1822:—

"I am at the same time directed to state, that the proposition of the Chevalier Correa de Serra, in his note of the 16th of July 1820, for the appointment of Commissaries chosen by both Governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported by the capital and means of citizens of the United States, cannot be acceded to. It is a principle well known and well understood that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction and out of the reach of its control.'

"The policy of the United States is further explained in a despatch of Mr. Secretary Adams to General Dearborn dated the 25th of June 1822. It is there set forth that in the critical state of the relations of the two countries, it is necessary to employ the agency of a person fully qualified to represent the interests of the United States. It is affirmed that whenever Portuguese captured vessels have been brought within the jurisdiction of the United States, decrees of restitution have been pronounced.

"In referring, however, to the list of captures and the demand of a joint Commission to determine and assess the damages to be paid by the United States, the former refusal was thus repeated: 'As there was no precedent for the appointment of such a Commission under such circumstances, and as not a single capture had been alleged for which the United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present Chargé d'Affaires of Portugal, leading to a correspondence, copies of which are now furnished you.'

"The correspondence seems not to have been resumed till 1850, when, as has been shown, the demand for a Commission was repeated.

"The Secretary of State of the United States thereupon gave this summary and final answer, dated May 30, 1850:—

"The undersigned is surprised at the re-appearance of these absolute reclamations, accompanied by the renewal of the ancient proposition to appoint a joint Commission to determine and assess damages, a



proposition which was rejected at the time upon substantial grounds; and without the Minister's assurance to that effect, the Undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the Minister of Her Most Faithful Majesty has presented in the name of his Government, the Undersigned must now, by the President's order, inform him that he declines reopening the proffered discussion."

"This despatch is signed 'John M. Clayton.'"

"A long and able despatch of the Portuguese Minister at Washington, recapitulating all the grievances of Portugal, dated November 7, 1850, does not appear to have received an answer."

After the close of the war between Spain and Portugal Brazil and the South American provinces the Foreign Enlistment Act seems not to have been called into requisition in any prominent case until 1848, when the United States prohibited a ship of war purchased for the German fleet during the war with Denmark from sailing from New York except under the bond required by the Act of 1818.

In 1850 a remarkable instance was afforded of the manner in which the Foreign Enlistment Act could openly be defied, when the sympathies of the American people were in favour of the offenders, in the expedition against Cuba under Lopez.

Lopez had been for some time preparing an expedition for the invasion of Cuba, and on the 7th of May 1850, left New Orleans in a steamer with about 500 men, accompanied by two other vessels, and on the 17th landed at Cardenas, a small town on the north-west side of the island. Lopez occupied the town; but shortly afterwards troops arrived from Havana, and he was compelled to re-embark, and escaped to Savannah.

On the 27th of May, Lopez was arrested (see Judge Bett's charge in the "Times" of the 13th of June, 1850), but "no delay being granted by the district judge to procure evidence against him, he was discharged, amid the cheers of a large crowd. On the 15th of July, forty-two of the country prisoners (passengers) were liberated by the Spanish authorities and were taken to Pensacola by the United States ship 'Albany.' Ten of them were retained for trial. On the 21st of July the grand jury of the United States District Court at New Orleans found a true bill against Lopez and fifteen others, for violating the Act of 1818. The Government failed in making out its case against one or two of the parties, and finally abandoned the prosecution."

Undeterred by the failure of the first expedition, Lopez at once set to work to organize another, in which he was "countenanced, aided, and joined by citizens of the United States." . . . "Very early in the morning of the 3rd of August 1851, a steamer called the 'Pampero' departed from New Orleans for Cuba, having on board upwards of 400 armed men, with evident intentions to make war upon the authorities of that island." The United States Government having received intelligence that such designs were entertained, had issued a proclamation warning American citizens of their unlawful character, and had also given instructions to the proper officers of the United States. However, in spite of these measures, the steamer in which the filibusters were embarked "left New Orleans stealthily and without a clearance, and after touching at Key West, proceeded to the coast of Cuba."

The expedition landed in Cuba on the 12th of August, and proved an entire failure. The Spanish troops defeated the invaders without difficulty, and either took prisoner or dispersed the whole body. Fifty of the prisoners were shot and Lopez publicly executed at Havana. The intelligence of the execution of Lopez and the prisoners, 40 of whom are stated to have been Americans, produced a great excitement in the United States. A riot took place at New Orleans in which the Spanish consulate was sacked, mass meetings were held at the principal cities for the purpose of denouncing the conduct of

the Cuban authorities, and further expeditions projected. The Spanish Government, however, released and sent back to the United States, a number of prisoners who complained bitterly of having been deceived by Lopez by exaggerated accounts of the condition of affairs in Cuba; and the public feeling in the United States gradually cooled down without any more attempts being made against the Island.

In 1855 the "Maury" was detained at New York on the information of Her Majesty's Consul that she was intended for a Russian privateer. The evidence, however, failed, and Sir Joseph Crampton, Her Majesty's Minister, withdrawing the charge against her, the "Maury" sailed and nothing more was heard of the matter. It was supposed that she really was intended for a privateer to act in the China seas, but that the Peace of 1856 prevented her from being thus used.

The expeditions of Miranda in 1806, and of Lopez in 1850 and 1851 were rivalled in flagrant violation of the Foreign Enlistment Act by the proceedings of Walker, and the Central American filibusters in 1857, 1858, 1859.

The disturbed state of the Central American Republics, especially Nicaragua rendered them a tempting prey to such adventurers and in November 1857 it was notorious that Walker was fitting out a filibustering expedition.

On the 10th of that month he was arrested at New Orleans, and held to bail in \$2,000 (about 400*l.*) to appear on the 11th for examination, on a charge of infringing the Act of 1818. On the morning of the 11th, however, he embarked with 300 unarmed followers for Mobile, where the party were met by a steamer called the "Fashion," with 50 recruits on board, and set sail, as was supposed for central America. The United States Government gave orders for them to be pursued, and Commodore Paulding succeeded in arresting Walker.

In reporting these occurrences, Lord Napier, then Her Majesty's Minister at Washington States, "I believe that the President and General Cass sincerely deprecate and regret the present attempt to invade the peace of Central America." (Lord Napier to the Earl of Clarendon, Nov. 16, 1857.)

It does not appear whether Walker was brought to trial for this offence, but if so the proceedings could not have been very efficacious, as in the following year he renewed his preparations for an expedition on a larger scale, and on the 30th of October 1858, President Buchanan issued a proclamation: "Whereas information has reached me, from sources which I cannot disregard, that certain persons, in violation of the Neutrality Laws of the United States, are making a third attempt to set on foot a military expedition within their territory against Nicaragua, a foreign State with which they are at peace." . . . "From these circumstances the inference is irresistible that persons engaged in this expedition will leave the United States with hostile purposes against Nicaragua. They cannot, under the guise which they have assumed that they are peaceful emigrants, conceal their real intentions, and especially when they know, in advance, that their landing will be resisted, and can only be accomplished by an overpowering force. This expedient was successfully resorted to previous to the last expedition, and the vessel in which those composing it were conveyed to Nicaragua obtained a clearance from the collector of the port of Mobile. Although, after a careful examination, no arms or munitions of war were discovered, yet, when they arrived in Nicaragua, they were found to be armed and equipped and immediately commenced hostilities."

"The leaders of former illegal expeditions of the same character have openly expressed their intention to renew hostilities against Nicaragua. One of them, who has already been twice expelled from Nicaragua, has invited, through the public newspapers, American citizens to emigrate to that republic, and has designated Mobile as the place of rendezvous and departure, and San Juan del Norte

Annual Register, 1850.

Memoir of Lopez in the New York Herald, quoted in the Chronicle of the 25th of September, 1851.

President's message December 1, 1851. Annual Register, 1851.

Parliamentary Paper correspondence respecting Central America 1856-60. Presented 1860, page 67.

Ibid p. 136.

"as the port to which they are bound. This person, who has renounced his allegiance to the United States, and claims to be President of Nicaragua, has given notice to the master of the port of Mobile that 200 or 300 of these emigrants will be prepared to embark from that port about the middle of November," &c., &c.

Ibid, p. 163.

Notwithstanding this Proclamation, the filibusters succeeded in sailing from Mobile on the 7th of December 1858, in the "Susan" without a clearance. A revenue cutter attempted to stop her, but was forcibly resisted. Two other vessels, the "Fashion" and the "Washington," with military stores, afterwards joined the "Susan," but the expedition broke down in consequence of the "Susan" being wrecked. Walker and his followers then proceeded to California by the Isthmus of Panama, whence they intended to make a descent on Punta Arenas.

This attempt was not carried into execution, and Walker returned to Louisiana and organized a further expedition. The United States Government gave directions to stop it, and concerted measures with the British and French Governments to prevent any such expeditions landing on the coasts of Central America. Moreover, 150 of the men concerned in the last attempt were arrested at New Orleans.

Ibid, pp. 296, 297.

Nevertheless Walker eluded the vigilance of the authorities, and again escaped without a clearance in the "Fashion" from Mobile in November 1859, having deceived the Collector of Customs by applying for a clearance, which the collector refused, for another steamer called the "Philadelphia." At the same time a large force of filibusters are stated to have got away from Charleston, Mobile, and other ports, by means of false papers and other similar devices.

Ibid, p. 328.

In June 1860, Walker, with a party of American filibusters, is reported to have arrived at the Bay Islands in the "John A. Taylor." Walker's career was eventually brought to a close by his being shot at Truxillo, September 1860.

On the 6th of June, 1866, the President published a proclamation warning United States citizens against engaging in an apprehended expedition against Canada (the Fenian raid), and on the 5th of June the Attorney General instructed the district attorneys and marshals to arrest "all prominent, leading, or conspicuous persons called 'Fenians' whom they had probable cause to believe have been or may be guilty of violations of the Neutrality Laws." Some prosecutions were subsequently instituted against certain of the Fenian leaders, but abandoned.

In 1866 a resolution was adopted by the House of Representatives which resulted in an inquiry by the Committee of Foreign Affairs into the operation of the Foreign Enlistment Act of 1818; and in July, General Banks presented the report of the committee with a draft of a bill by which it was proposed to alter the provisions of that Act. The principal alterations proposed were the omission of section 4 (the clause forbidding the fitting out of privateers in foreign ports to cruise against American commerce) sections 6 and part of 8 (giving the President power to stop military expeditions) and sections 10 and 11, the bonding clauses.

Mr. Bernis' pamphlet "American Neutrality" 1866.

The intention of this draft bill was to make the American Act correspond with the British Act, or, as was said at the time to "scale down" the one to the proportions of the other. The report of the committee called forth a pamphlet by Mr. Bernis, in which he shows how inexpedient and impolitic the proposed alterations would have been, and compares the amended Act with the British statute.

Copies of this pamphlet have been circulated among the Commissioners.

Congress adjourned shortly after this report was presented and had been referred to the Senate, and in March 1867 the Senate Committee of Foreign Affairs were "discharged from further consideration" of the bill.

New York Herald March 1, 1867.

In the meanwhile, a case had been brought before the district court at New York, in which the Act of 1818 was enforced against a vessel alleged to be

intended for the Chilian service in the war between Chili and Spain.

This vessel, the "Meteor," had been built as a ship of war for sale to the United States Government, but the civil war having terminated, the sale was not effected. She was acknowledged to have been built to carry 11 or 12 guns, and the negotiations of the agent of the owners for her sale to the Chilian Government were shown by conclusive evidence.

The vessel was libelled in the district court in February 1866, but Judge Bett's decision in the case was not formally given until November.

"The World," New York, November 30, 1866.

In the elaborate judgment then delivered, the standard decisions of the supreme court are reviewed at length.

The following are some of the more important passages:

*"The Crime denounced is Fitting-out or Arming."*

"It was strenuously urged by the counsel for the claimant, on the hearing, that the only crime created by the third section of the Act of 1818, is the crime of fitting-out and arming a vessel with the intent named in the statute; and that, although the attempt to commit that crime, or the procuring that crime to be committed, or the being knowingly concerned in committing that crime, is punishable under the statute, yet the body of the crime is the fitting-out and arming, and nothing short of that is punishable under the statute, either against the wrong doer personally, or against the offending *res*; and the interpretation sought to be put by the counsel upon these words of the statute, "or shall knowingly be concerned in the furnishing, fitting-out, or arming of any ship or vessel, with intent," &c., is that it is not necessary to the criminality of the individual that he should have performed every part of the crime, but it is enough if he was knowingly concerned in any one step in the chain of conduct which completed the criminality, or would have completed it if carried out, but still the crime must be the crime of fitting-out and arming, either completed or attempted. But the Court cannot adopt this interpretation of the statute. The mischief against which the statute intended to guard, was not merely preventing the departure from the United States of an armed vessel, but the departure of any vessel intended to be employed in the service of any foreign power, to cruise or commit hostilities against any other foreign power with whom the United States are at peace. The neutrality of the Government of the United States, in a war between two foreign powers, would be violated quite as much by allowing the departure from its ports of an unarmed vessel with the clear intent to cruise or commit hostilities against one of the belligerents, as it would be by permitting the departure from its ports of an armed vessel with such intent. If the intent to cruise or commit hostilities exists when the vessel departs, and the vessel is one adapted to the purpose, the subsequent arming is a very easy matter. The facility with which this can be done was made manifest in the case of the "Shenandoah" and other vessels which, during the late rebellion, left England unarmed, but with the full intent on the part of those who sent them forth that they should be used to cruise and commit hostilities against the United States, and were subsequently armed in neutral waters. It would be a very forced interpretation of the statute to say that it was not an offence against it to knowingly fit out a vessel with everything necessary to make her an effective cruiser, except her arms, and with the intent that she should become such a cruiser, because it should not be shown that there was any intent that she should be armed within the United States. The evil consequences which would flow from interpreting the statute to mean that the crime must include the arming of the vessel within the United States, become especially apparent in reference to that part of the third section which forbids the issuing or delivering a commission, within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be em-

ployed for the purpose named in the section. Under such an interpretation of the statute it would be no offence to issue or deliver a commission within the United States for any vessel, unless such vessel were actually armed at the time or perhaps were intended to be armed prior to her departure from the United States; and it would be no offence to issue a commission within the United States for a vessel fitted and equipped to cruise or commit hostilities, and intended to cruise and commit hostilities, so long as such vessel was not armed at the time, and was not intended to be armed within the United States, although it could be shown that a clear intent existed on the part of the person issuing or delivering the commission, that the vessel should receive her armament the moment she should be beyond the jurisdiction of the United States." \* \* \*

*"The 'Santissima Trinidad' Case."*

"Much reliance was placed by the counsel for the claim, in his summing up, upon the doctrine supposed by him to have been laid down by the Supreme Court in the case of the *"Santissima Trinidad."* That doctrine was stated by the counsel in various forms, but the principle contended for was, that freedom of commerce is allowed to a neutral to furnish to a belligerent warlike materials or warlike vessels, as articles of merchandise or traffic; that while the principle of the law of nations is recognized, which prohibits neutral territory from being used by either belligerent as a vantage ground from which he may sally forth to commit hostilities upon the other belligerent, yet the right of citizens of the neutral country to sell all that their industry produces for purposes of war, as fair matter of trade, to any belligerent, cannot be interfered with; that it is no offence and no violation of neutrality to sell a vessel of war, armed or not armed, in our ports, to a belligerent power; and that there is the same right, under the law of nations, to sell in our ports an armed vessel, under such circumstances, that there is to sell guns or ammunition or any other raw material. At another stage of his argument, the counsel maintained the proposition, that unless it appeared affirmatively that the vessel was to sail out from the port of New York as an enlisted hostile ship of one belligerent, there was no criminality, although it should be made to appear by indisputable proof that she had been built, fitted, armed, and equipped, as a ship of war, complete and ready for action.

"The views thus pressed upon the Court have, in its judgment, no foundation in public law, or in any decision that has been made by the highest judicial tribunal of the United States. The case of the *"Santissima Trinidad"* was decided by the Supreme Court at the February Term, 1822."

Judge Betts then gives an account of the facts of the case (*vide ante*), and continues: "In the course of his opinion, Mr. Justice Story discusses the point taken that the *'Independencia'* was originally armed and fitted out in the United States contrary to law, and says, 'It is apparent that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure,' &c., &c. These views of Mr. Justice Story were, as is apparent from the statement which has been made of the case, *obiter dicta*, and not necessary to the decision of the cause, restitution of the property being decreed upon the ground of the illegal augmentation of the force of the capturing vessel in our ports prior to the capture. The facts in regard to the commercial adventure of the *'Independencia'*, referred to by Mr. Justice Story, as they appear in the report of the case, were that that vessel, having been a privateer during the war between the United States and Great Britain, was, after the peace, sold by her original owners, and loaded by her new ones, at Baltimore, in January 1816, with a cargo of munitions of war; that she sailed from Baltimore with them, and armed with 12 guns, part of her original armament to Buenos Ayres, under written instructions from her owners to her supercargo, authorizing him to sell the vessel to the

Government of Buenos Ayres, if he could obtain a suitable price; and that she was sold at Buenos Ayres to parties who again sold her, so that she became a public commissioned vessel of the Government of Buenos Ayres. It was on these facts that Judge Story remarked that the vessel, though equipped as a vessel of war, was sent to Buenos Ayres on a commercial adventure in no shape violating our laws or our national neutrality, and that there is nothing in our laws or in the law of nations, that forbids our citizens from sending armed vessels to foreign ports for sale. If the Messrs. Forbes, or any of the owners of the *"Meteor,"* or Mr. Cary their agent, or any of the parties concerned in the transactions in regard to the *"Meteor,"* had testified before the court on this trial, that the *"Meteor"* was going out to Panama on a purely commercial adventure, to be sold there if a suitable price could be obtained, and if it appeared that there was no intent on the part of the owners or any other person, that the vessel should be used to violate the neutrality of the United States, there might be some pretence that this case was within the principle thus laid down by Mr. Justice Story. But the whole testimony points in a different direction. The transactions with the agents of Chili at New York, in regard to the *"Meteor,"* was, it is true, a commercial adventure, in so far that the vessel was sold, and that such sale was a matter of trade or commerce at New York, between her owners and the agents of the Government of Chili. But in the sense in which Mr. Justice Story speaks of the sending of the *"Independencia"* to Buenos Ayres on a commercial adventure, there was no commercial adventure in the case of the *"Meteor."* \* \* \*

*"The Doctrines laid down in this Case are the Result of the Legislative, Executive, and Judicial Action of the United States."*

The importance of this case, not merely in view of the pecuniary value of the vessel proceeded against, but also in respect to the principles of public law involved in it, have led the court to a more extended discussion of those principles than would otherwise have been necessary. The court, however, entertains no doubt as to the correctness of the doctrines of public law which it has applied to the present case. Those doctrines are the result of the legislative, executive, and judicial action of the public authorities and courts of the United States in a great variety of cases, and the court has nowhere found a more excellent summary of them than in *Wheaton's International Law*, (8th Edition, with notes by Dana, pages 562, 563, note 215): "As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, but the intent with which the particular acts are done. If any person does any act, or attempts to do any act towards such preparation, with the intent that the vessel shall be employed in hostile operations, he is guilty, without reference to the completion of the preparations, or the extent to which they may have gone, and although his attempt may have resulted in no definite progress towards the completion of the preparations. The procuring of materials to be used knowingly and with the intent, &c., is an offence. Accordingly, it is not necessary to show that the vessel was armed, or was in any way or at any time before or after the act charged, in a condition to commit acts of hostility." "Our rules do not interfere with *bona fide* commercial dealings in contraband of war. An American merchant may build and fully arm a vessel, and provide her with stores, and offer her for sale in our own market. If he does any acts as an agent or servant of a belligerent or in pursuance of an arrangement or understanding with a belligerent, that she shall be employed in hostilities when sold, he is guilty. He may, without violating our law, send out such a vessel, so equipped, under the flag and papers of his own country, with no more force of crew than is suitable for navigation, with no right to resist search or seizure, and to take the chances of capture as con-

"traband merchandise, of blockade, and of a market in a belligerent port. In such case, the extent and character of the equipments is as immaterial as in the other class of cases. The intent is all. The act is open to great suspicions and abuse, and the line may often be scarcely traceable; yet the principle is clear enough. Is the intent one to prepare an article of contraband merchandise, to be sent to the market of a belligerent, subject to the chances of capture and of the market? Or, on the other hand, is it to fit out a vessel which shall have our port to cruise, immediately or ultimately, against the commerce of a friendly nation? The latter we are bound to prevent; the former the belligerent must prevent."

The judgment was given against the vessel, but she was eventually restored to her owners under bond, and what became of her afterwards does not appear.

It must be remembered that this opinion of Judge Betts was not reviewed by the Supreme Court, and is therefore of inferior authority.

It has been much criticised both in this country and in the United States.

This brings the history of the American Foreign Enlistment Act down to the present time.

In 1838, on the outbreak of the rebellion in Canada, the United States Government issued a Proclamation cautioning United States citizens from assisting in it.

A strong military force was also sent to the frontier, and the President delivered a Message to Congress recommending the enactment of some special measure to meet the occasion. In the meanwhile, an expedition was openly organized at Detroit. This expedition seized the arsenal and the steam-boats, and ships lying off the Detroit wharves, and succeeded in getting off to Canada without hindrance. A military force was then ordered to the frontier, and sent to Plattsburg, where another expedition was said to be fitting out. A Bill for the prevention of such expeditions was introduced into Congress, but not passed until the 10th of March, by which time the rebellion was nearly subdued.

This Act, which was limited to two years, provided for the seizure and detention of any vessel, vehicle, or arms or munitions of war "provided or prepared for any military expedition or enterprise against the territory or dominions of any foreign Prince or State, or of any Colony, district, or, people, contiguous with the United States."

#### THE BRITISH FOREIGN ENLISTMENT ACT.

The United States Foreign Enlistment Act, as will have been seen, arose from the construction put on the terms of the Treaty with France of 1778; the British Foreign Enlistment Act may also be said to have arisen from the provision of a Treaty, that with Spain of the 28th of August 1814.

This Treaty, or, as it is called, "Additional Articles to the Treaty of July 5, 1814," contains the following Article:—

"Article III. His Britannic Majesty being anxious that the troubles and disturbances which unfortunately prevail in the dominions of His Catholic Majesty in America should entirely cease, and the subjects of those provinces should return to their obedience to their lawful Sovereign, engages to take the most effectual measures for preventing his subjects from furnishing arms, ammunition, or any other article to the revolted in America."

In 1818 the reactionary policy of King Ferdinand, the prohibitory duties imposed by him on British commerce, and the ingratitude with which he treated British officers and others who had served his cause in Spain, had provoked a great deal of irritation in England; and there was a considerable party in the House of Commons, headed by Sir James Macintosh, who were prepared to support the claims of the Spanish-American Colonies to independence.

Expeditions were said to be in preparation for rendering active assistance both to the malcontents in Spain and to the rebels in America, in spite of a Pro-

clamation forbidding such expeditions, which had been published in 1817; and the Government consequently found that it was necessary, in order to keep good faith with Spain, and to prevent infractions of British neutrality, to bring in an Act of Parliament to provide for the case which now for the first time arose in modern history, of Great Britain being neutral at the time of a great maritime war.

The history of the British Neutrality Law at that period is thus stated by Sir R. Phillimore:—

"The Statute of the third of James I., chapter four, made it felony for any person whatever to go out of the realm, to serve any foreign Prince, without having first taken the oath of allegiance before his departure. It was felony also for any gentleman, or person of higher degree, or for one who had borne any office in the army, to go out of the realm to serve such foreign Prince or State, without previously entering into a bond with two sureties, not to be reconciled to the See of Rome, or enter into any conspiracy against his natural Sovereign. And further it was enacted by Statute 9 Geo. II., c. 30, enforced by Statute 29 Geo. II., c. 17, if any subject of Great Britain shall enlist himself, or if any person shall procure him to be enlisted in any foreign service, or detain or embark him for that purpose, without licence under the King's sign-manual, he shall be guilty of felony without benefit of clergy; but if the person, so enlisted or enticed, shall discover his seducer within fifteen days, so as he may be apprehended and convicted of the same, he shall be indemnified. It was moreover, by Statute 29 Geo. II., c. 17, enacted that to serve under the French King, as a military officer, shall be felony without benefit of clergy; and to enter into the Scotch brigade, in the Dutch service, without previously taking the oaths of allegiance and abjuration, shall be a forfeiture of 500*l.*"

The Act for the amendment of the Neutrality Laws was introduced by Mr. Canning on the 10th of June 1819, in an eloquent speech, in the course of which he said, "It surely could not be forgotten that in 1793 this country complained of various breaches of neutrality (though much inferior in degree to those now under consideration) committed on the part of subjects of the United States of America. What was the conduct of that nation in consequence? Did it resent the complaint as an infringement of its independence? Did it refuse to take such steps as would insure the immediate observance of neutrality? Neither. In 1794, immediately after the application from the British Government, the Legislature of the United States passed an Act prohibiting, under heavy penalties, the engagement of American citizens in the armies of any belligerent Power. Was that the only instance of the kind? It was but last year that the United States passed an Act by which the Act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign Power; and pointing distinctly to the service of Spain or the South American Provinces."

On the other hand, Sir James Macintosh inveighed against the Act as a left-handed neutrality, and as aimed at the struggling independence of South America. Sir W. Scott spoke in favour of the bill on the third reading on the 21st of June, and it was passed by a majority of sixty-one.

Many amendments had, however, been introduced into it, and amongst others the insertion of the words "as a transport or store ship" in the seventh clause. This was intended to prevent British ships being hired to take troops from Spain to America; but the result has been to create the greatest confusion of meaning in the Act.

The passing of this Act seems to have put a stop, for the time at least, to the despatch of expeditions against Spain; and in April 1823, Lord Althorp moved for the repeal of the Act. Mr. Canning in reply entered into the question of the neutrality of England, and pointed out that, far from being aimed exclusively at South America, this Act was in reality in favour of the Colonies, as it extended to Spain the prohibition

Phillimore's  
"International Law,"  
vol. iii., ed.  
1867, page  
212.

Cobbett's  
"Parliamentary  
Debates,"  
vol. xi., page  
1103.

Cobbett's  
"Parliamentary  
Debates,"  
New Series,  
vol. viii.,  
page 1019.

to export arms, &c., which had been already provided for against them by the Treaty of 1814. Referring to the United States law, he said: "If I wished for a guide in a system of neutrality, I should take that laid down by America in the days of the Presidency in Washington, and the secretaryship of Jefferson. In 1793, complaints were made to the American Government that French ships were allowed to fit out and arm in American ports, for the purpose of attacking British vessels, in direct opposition to the laws of neutrality. Immediately upon this representation, the American Government held that such a fitting out was contrary to the laws of neutrality; and orders were issued, prohibiting the arming of any French vessel in American ports. At New York, a French vessel fitting out was seized and delivered over to the tribunals and condemned. Upon that occasion the American Government held that such fitting out of French ships in American ports for the purpose of cruising against English vessels was incompatible with the sovereignty of the United States, and tended to interrupt the peace and good understanding which subsisted between that country and Great Britain. Here, I contend, is the principle of neutrality upon which we ought to act. It was upon this principle that the bill in question was enacted."

The motion was rejected by a majority of 106.

The Neutrality Law of the United States having formed the foundation of the Neutrality Law of this country, and the decisions of the judges of that country having been, as it were, incorporated in the law of nations, the application of the United States Foreign Enlistment Act has been treated of at some length, but as it would be useless to attempt within the compass of a memorandum to go into the intricate questions of "intent," "equipping, fitting out or arming," &c., &c., which have at various times been raised under the British Act, it is only proposed to mention some of the leading instances in which it has been put into operation or suspended.

In 1827 an expedition of four vessels, under the command of Count Saldanha, sailed from Plymouth, ostensibly for Brazil, but in reality, as was supposed, to operate against the party of Don Miguel in Terceira. Her Majesty's ship "Walpole," with some gun-boats, was sent to Terceira to intercept this expedition. This was done off Port Praya, and the "Walpole" escorted the expedition back to the Channel. It eventually went to Brest. The "Walpole" subsequently stopped another expedition off Port Praya which had sailed from London.

In 1835 an Order in Council was passed exempting British subjects engaging in the service of Isabella of Spain from the penalties of the Foreign Enlistment Act. This enabled the Spanish Legion, under Sir De Lacy Evans, to be formed. A debate took place on the question in June 1835, but the competency of the Crown to make such a relaxation was not disputed.

In 1846 certain British merchants complained that an expedition was being prepared to sail under General Florez against Ecuador. Their representation was supported by several of the South American ministers. It appeared that three vessels, the "Glenelg," "Monarch," and "Neptune," were ready to set sail with a large number of emigrants, or, as it was said, troops on board, and that men had been openly enlisted for General Florez's service. The vessels were seized and condemned.\*

In 1847 the Portuguese Minister complained that the "Black Cat" was being fitted out to proceed with volunteers for the Portuguese rebel service. The vessel was seized, but released.

Shortly afterwards he made another complaint of a number of British subjects having taken service at Oporto under the revolutionary leaders. He was told in reply, that the English law did not extend to such acts committed in a foreign country.

A Mr. Hislop, however, who had returned from

Portugal after serving in the rebel army, was denounced by the Portuguese Minister, and would have been proceeded against had the Law Officers considered the evidence sufficient.

On the 30th of August 1862 an Order in Council was issued, suspending the Foreign Enlistment Act, so far as to enable Captain Osborn and Mr. Lay to enter the service of the Emperor of China "to fit out, equip, purchase, and acquire ships or vessels of war for the use of the said Emperor, and to engage and enlist British subjects to enter the military and naval service of the said Emperor." This permission to remain in force until the 1st of September 1864.

The license granted by this Order in Council was extended to "all military officers in Her Majesty's service," by the Order in Council of the 9th of January 1863, with a similar limitation to the 1st of September 1864.—(Hertslet's Commercial Treaties, vol. xi., pp. 665-683.)

It will be observed that in all, or nearly all, the cases up to the time of the American civil war the Foreign Enlistment Act had been invoked to prevent the enlistment and despatch of recruits and soldiers rather than the equipment of vessels.

The American civil war introduced a new series of cases, in which the Foreign Enlistment Act was called into operation. These are so well known that it will be sufficient merely to name them in the order as they occurred.

"Creto," tried at Nassau; released August 1862.

"Alexandra," tried in England.

This was the celebrated cause in which all the issues as to the meaning of the equipment clauses of the Foreign Enlistment Act were raised. The vessel was acquitted, the four Judges in the Exchequer Court being equally divided in opinion; the junior withdrew. The costs and damages were compromised by the Government for 3,700*l.*, and the vessel sailed for Nassau. Here she was again seized and remained under seizure until the end of the war.

The ironclads "El Toussoun" and "Mounassir" at Liverpool, said to have been ordered for the Egyptian Government. The ships were seized, but eventually purchased by Government, and are now Her Majesty's ships "Wivern" and "Scorpion."

The "Canton" or "Pampero." This vessel was seized in the Clyde, and the builder allowed judgment to be taken against him. She remained under seizure until the close of the war, and has now become notorious under the name of the "Tornado."

There were five prosecutions for enlisting men to serve in Confederate vessels:

Mr. Rumball, the officer of Sheerness Dockyard, who took part in the equipment of the "Rappahannock." He was acquitted, February 4 1865, although the case against him was a very strong one.

Messrs. Jones and Highat for enlisting men for the Confederate service. They were convicted and sentenced, November 23 1864, to pay a fine of 50*l.* each.

Campbell, enlisting for Georgia, pleaded guilty, and released on recognizances of 150*l.* to appear when called upon.

Seymour, Cunningham, and Buchanan, convicted of enlisting for "Rappahannock," and discharged on recognizances.

Captain Corbett, who commanded the vessel that took out the armament and crew to the "Shenandoah" at the Desertas off Funchal. A very strong case, but the evidence for the prosecution as to the actual enlistment of men broke down and Captain Corbett was acquitted.

The cases of the "Alabama," "Shenandoah," and "Georgia," are fully explained in the Parliamentary Papers, of which copies have been furnished to the Commissioners.

For an epitome of the representations addressed to Her Majesty's Government, by Mr. Adams, during the civil war, see the Memorandum annexed to Lord Russell's letter to Mr. Adams of November 3, 1865, (Parl. Paper, North America, No. 1, 1866, p. 139.)

CHAS. S. A. ABBOTT.

\* There is no record of the trial in the Foreign Office.

Phillimore, vol. iii. page 229.

Phillimore, vol. iii. pages 218 and 219.

Correspondence with Home Office and Treasury, October and November 1846.

Correspondence with Baron Moncorvo, April and May 1847.



## APPENDIX No. IV.

## REPORTS FROM FOREIGN STATES, DECLARATIONS OF NEUTRALITY, &amp;c.

The accompanying circular was sent by the Foreign Office to Her Majesty's representatives at the courts of the following countries :

Austria.  
Belgium.  
Denmark.  
France.

Italy.  
The Netherlands.  
Portugal.  
Prussia.

Spain.  
Sweden.  
United States.

Foreign Office,

February 14, 1867.

The Commission which has been appointed by the Queen to consider the Neutrality Laws of this country being desirous of obtaining information respecting similar laws in other maritime countries, I have to

instruct you to ascertain and report, with as little delay as possible, what laws, regulations, or other means the Government to which you are accredited possess for preventing acts within their territories of which belligerents might complain as a violation of the duties of neutrality.

And the following papers were received, in reply.

## AUSTRIA.

(Received from Her Majesty's Embassy at Vienna.)

NOTE from the Minister of Foreign Affairs to Her Majesty's Ambassador.

MR. BONAR, H.B.M.'s Chargé d'Affaires was pleased to make inquiry of the Imperial Minister of Foreign Affairs as to what laws, regulations, or measures are laid down by the Government of H.I.M. in order to prevent transactions in their territory of which belligerent powers might complain as being an infringement of the Neutrality Laws. After consulting the competent authorities, the Minister of Foreign Affairs has now the honour to communicate to Lord Bloomfield, &c., &c., &c. with reference to the above question, as follows :

The Declaration signed in Paris by the Representatives of Austria, France, Great Britain, Prussia, Russia, Italy, and Turkey, on the 18th of April 1856, concerning the Rights of Neutrals in Naval Warfare has been published in legal course in Austria, and constitutes, therefore, a law generally in force.

Apart from the principles which lie at the foundation of this declaration, there exists, however, no law in Austria, nor any other order generally binding, which could be made to apply to violations of Neutrality by Austrian subjects.

The Imperial Government have endeavoured to supply this want in cases of war between other states, by promulgating in legal forms special regulations for the preservation of Neutrality applicable only to the war in question. Thus, in the year 1854, in consequence of the war then existing, the Ministerial Ordinance of May 25, 1854, was promulgated, of which copy is enclosed herewith.

In such special declarations the generally acknowledged principles of international law, as well as the known views of the belligerent powers on certain points, have been taken into consideration, in order, as much as possible, to obviate any complaints of infringement of neutrality.

There does not exist, however, a law of this kind applicable to all future occasions, and more particularly there are no general laws in Austria prohibiting the construction, equipment, or manning of ships (in Austrian harbours) which are destined for belligerent powers, or are suspected of being so.

The undersigned, &c., &c.

(Signed) MEYSENBUG.

Vienna, May 16, 1867.

*Published on the 28th May 1854.*

Decree of the Ministries of the Interior, of the Exterior, of Justice and of Trade, as well as of the Commander-in-Chief of the Army, of the 25th

May 1854, by which are published the principles to be observed during the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, by the Imperial authorities and subjects with reference to trade and navigation.

In consequence of the war which has broken out between England, France, and the Ottoman Empire on the one side, and Russia on the other side, the following regulations are published with the consent of His Imperial Apostolic Majesty, given on the 23rd May 1854, according to which all Imperial, Civil and Military Authorities, as well as all Austrian subjects will have to regulate their conduct.

1. The acceptance or employment of lettres de marque under whatever form or flag, as well as every kind, share in the command, manning of or fitting out of privateers is prohibited to Austrian subjects. Whoever acts otherwise, has not only to expect no protection on the part of the Imperial Government, if he is subjected to punishment in other states, but he shall also be treated according to the existing laws for robbery, as the acceptance of lettres de marque is to be considered as an attempt at robbery.

2. Should foreign privateers provided with lettres de marque from one of the belligerent powers present themselves, the entrance into our harbours is to be refused, except in case of imminent danger from storms, and then their earliest possible departure must be insisted on.

3. It is forbidden to ships under Austrian colours to carry troops of the belligerent states, or to import into those countries commodities which according to the law of nations, or other universally known regulations, are considered as contraband of war.

Of such commodities, an Austrian ship in intercourse with these states may only carry so much as is strictly necessary for its own use or defence.

Whoever infringes on this prohibition has no protection to expect from the Austrian Government in case of legitimate seizure and confiscation on the part of the belligerent states, but will be punished besides.

4. Austrian ships are forbidden to enter into such places and harbours as are besieged by one of the belligerent powers, or blockaded by a sufficient force, as otherwise they would neither have to expect to enjoy the freedom of a neutral flag, nor assistance or interference on the part of the Imperial Government.

5. Except in this case, Austrian merchant ships are not hindered, in spite of the existing war, in carrying on their trade and intercourse with the

harbours of the powers engaged in the war, and in like manner the merchant-ships of the belligerent states may as before enter without hindrance into all Austrian harbours, remain as long as they please, get repairs, &c., &c., in so far as they observe the existing laws and regulations, and so long as their conduct is in accordance with the rules of neutrality.

With respect to the admission of foreign ships of war into Austrian harbours, the conditions of the decree of the Ministry of War of the 29th January 1850 remain in force.

6. On the expectation that the neutral Austrian trade will be properly respected by the belligerent powers, and that the customary privileges of belligerents will be exercised with a proper observance of the laws of nations, or of any modifications of them consonant with treaties, it is herewith decreed, that Austrian navigators shall not oppose themselves to visitation on the open sea on the part of foreign ships of war, but on the contrary shall, without difficulty, show the papers and documents by which their neutral capacity is proved, throw none of them into the sea, or otherwise destroy them, nor keep on board false or duplicate and secret papers.

The belligerent powers have besides officially expressed the satisfactory declaration that the property of the enemy in neutral ships, and neutral property in the enemy's ships, with the exception of contra-

band of war and the enemy's despatches, shall be respected and not taken.

7. The captures which the belligerent powers make from the enemy may only be admitted into the harbour of Trieste (with exception of every other Austrian harbour), where the effects may be disembarked, deposited, administered, (in case they do not contain goods, the import of which into the Imperial states is forbidden,) bought, or sold, or be exported anew in the course of trade, but all under the condition that the judicial decision shall have been given by the competent authority of the power which has taken the prize as to their legitimacy. Should some goods be exposed in the meantime to inquiry, these may be sold beforehand, but only on sufficient security for their value being given, in case the decision should declare the liberation of the ship.

8. Should an Austrian ship, in spite of its obedience to the above regulations, be treated in an improper manner, information is to be given without delay to the nearest Austrian consular or other Imperial authority, in order that the Imperial Government may take steps to obtain compensation and satisfaction from the foreign state, and when steps have already been taken by the injured party to support them.

9. These regulations will be put in force from the day of their publication.

#### BELGIUM.

(Received from Her Majesty's Legation at Brussels.)

(1.) Article 14 du titre IX. de l'Ordonnance sur la Marine de 1861.

Aucun vaisseau pris par capitaines ayant commission étrangère ne pourront demeurer plus de 24 heures dans nos ports et havres s'ils n'y sont réténus par des tempêtes (ou si la prise n'a été faite sur nos ennemis).

(2.) Article 84 du Code Pénal.

Quiconque aura par des actions hostiles non approuvées par le Gouvernement exposé l'Etat à une déclaration de guerre sera puni de banissement, et si la guerre s'en est suivie, de la deportation.

(3.) Article 85 du Code Pénal.

Quiconque aura par des actes non approuvés par le Gouvernement exposé des Belges à éprouver des représailles sera puni de banissement.

(4.) Déclaration du 25 Avril 1854, à l'occasion de la Guerre de Crimée.

Le commerce est informé que des instructions ont été adressées aux autorités judiciaires, maritimes, et militaires, pour les prévenir que les corsaires portant pavillon quelconque, ou munis de lettres de marque ou commissions quelconques seuls, ou avec les bâtiments qu'ils auraient capturés, ne seront admis dans nos ports qu'en cas de danger imminent de mer; ces autorités sont en conséquence chargés de surveiller les corsaires et leur prises, et de leur faire reprendre la mer le plus vite possible.

Il a été prescrit aux mêmes autorités de ne reconnaître de valeur légale à une commission ou lettre de

marque délivrée par les Puissances belligérantes sans l'autorisation du Roi.

Toute personne soumise aux lois du royaume qui ferait des armements en course, ou qui y prendrait part s'exposerait donc d'un côté d'être traité comme pirate à l'étranger, et de l'autre à être pour-suivie devant les tribunaux Belges suivant toute la rigueur des lois.

(5.) Déclaration du 8 Mai 1859 à l'occasion de la Guerre d'Italie.

La Belgique a adhéré aux principes posés dans la déclaration du Congrès de Paris du 16 Avril 1856.

Le commerce est informé que des instructions ont été adressées à ce sujet aux autorités judiciaires, maritimes, et militaires.

Toute personne soumise aux lois du royaume qui ferait des armements en course, ou qui y prendrait part, au bien qui poserait des actes contraires aux devoirs de la neutralité, s'exposerait d'un côté à être traité comme pirate à l'étranger, et de l'autre pour-suivie devant les tribunaux Belges suivant tout la rigueur des lois.

(6.) Déclaration du 22 Juin 1861, à l'occasion de la Guerre d'Amérique, indentique à la déclaration du 8 Mai 1859.

(7.) Déclaration du 11 Jui 1865, à l'occasion de la Guerre entre Brésil, et le Paraguay, également indentique.

(8.) Déclaration du 18 Février 1866, à l'occasion de la Guerre entre l'Espagne et le Chili, et celle du 14 Mars 1866, à l'occasion de la Guerre entre l'Espagne et le Pérou, également indentiques.

#### DENMARK.

MY LORD, Copenhagen, April 30, 1867.

In pursuance of the instructions contained in your Lordship's circular despatch, of the 14th of February, addressed to Sir Charles Murray, I have the honor to transmit herewith to your Lordship copy of a note that has been addressed to me by Count Frys Frysensborg, transmitting copies of the Danish laws and regulations in vigor for the prevention of acts within Danish territories of which belligerents

might complain as a violation of the duties of neutrality.

Enclosure No. 2 to this despatch is a set of laws, with translation, dated May 4, 1803, for the guidance of merchants and shipmasters in time of war between maritime powers. In the 13th article are enumerated the goods that are to be considered as contraband of war.

Very important special regulations are laid down

in Article 14, with a view to controlling the shipment of articles contraband of war, and to ensuring their due delivery at neutral ports.

According to the 18th Article, Danish owners and masters of merchant vessels who infringe the law not only forfeit their right to Danish citizenship and the protection of their Government, in case of seizure by the enemy, but likewise expose themselves to prosecution by the tribunals of their country.

Various articles of the law of May 4, 1803, will be annulled by the provisions of a new law bearing date March 13, 1867 (copy of which, together with a translation, was transmitted to your Lordship's office by Mr. Consul Bridges Taylor, in his despatch, of the 27th instant,) and which is to come into force in the month of October of the present year.

In it are defined the character of the ship's papers which all Danish merchant ships will in future be required to possess in order to prove their nationality.

They will consist of a certificate of registry, the articles of agreement, custom-house clearance, charter party, and bills of lading.

The ancient Latin passports are abolished.

By a set of regulations embodied in an ancient circular of the Royal Danish Chancellerie, dated May 20, 1823 (Enclosure No. 4 in this despatch, with translation), privateers are forbidden to enter Danish ports, except on account of stress of weather or pursuit by an enemy. They are bound, however, to quit their place of refuge so soon as the danger be past.

An injunction is likewise laid on foreign vessels of war, as well as privateers, from sending their prizes to, or selling them or their cargoes in Danish ports, and Danish subjects are strictly forbidden to purchase any prize brought into Danish ports.

The 6th enclosure to this despatch is copy of a circular, together with translation, which was addressed, during the Crimean war, to the commanders of vessels stationed in Danish waters, and points out the course they were directed to pursue in order to maintain the neutrality of Danish territory, and to prevent the commission of any act that might give umbrage to either of the belligerents at that time engaged in hostilities.

I have likewise the honour to enclose herewith to your Lordship copy of the 76th Article of the Danish Penal Code of February 10, 1866, fixing the penalties to be inflicted on persons who, without royal authorization, should enlist soldiers in Denmark to serve in a foreign war.

I have the honour to be,  
with the highest respect,

My Lord, Your Lordship's

most obedient humble Servant,

The Lord Stanley, M.P.,  
&c. &c. &c.

FRANCIS CLARE FORD.

MONSIEUR, Copenhague, le 26 Avril 1867.

APRÈS m'être concerté avec les Ministres compétents sur la teneur de la note que Sir Charles Murray m'a adressée en date du 19 Février de l'année courante au sujet des dispositions de loi destinées à prévenir sur le territoire Danois des actes dans lesquels, en cas de guerre entre des puissances étrangères, celles-ci pourraient voir une violation des devoirs d'un état neutre, j'ai l'honneur des vous faire parvenir sous ce pli :

I. Un exemplaire de l'ordonnance du 4 Mai 1803 contenant les règles que les armateurs et capitaines de navires ont à observer pendant une guerre maritime à laquelle le Danemark ne prendrait point part.

II. La copie d'une circulaire de la ci-devant Chancellerie Royale Danoise en date du 20 Mai 1823 indiquant les conditions auxquelles les vaisseaux de guerre et les corsaires des puissances belligérantes pourraient entrer dans les ports Danois pendant une guerre dans laquelle le Danemark ne serait pas engagé.

III. Une circulaire qui pendant la dernière guerre d'Orient a été adressée aux chefs des vaisseaux de la

marine royale ayant station dans les parages Danois, et qui leur prescrit la ligne de conduite que, conformément à la législation du pays, ils avaient à suivre pour maintenir la neutralité du territoire Danois et empêcher des actes de nature à donner ombrage à l'une ou l'autre des puissances belligérantes.

IV. La traduction Française de l'article 76 du code pénal du 10 Février 1866 qui indique les peines encourues par les personnes qui, sans la permission du Roi, recruteraient des soldats sur le territoire Danois pour le service militaire d'une puissance étrangère.

En appelant votre attention sur la teneur de ces ordonnances et publications je crois devoir vous donner une courte analyse des principales dispositions de l'ordonnance du 4 Mai 1803.

Les articles I. à XIII., contiennent des prescriptions détaillées sur les papiers de bord, dont, en cas de guerre maritime entre des états étrangers, les navires de commerce Danois doivent être munis pour constater leur nationalité. A l'égard des ces prescriptions je dois toutefois vous faire observer, que, la présence à bord des navires marchands de passeports Latins n'étant pas exigée par les traités entre le Danemark et la Grande Bretagne (voir la note de Lord Russell au Ministre du Roi à Londres en date du 29 Juin 1861) le Gouvernement a dispensé les armateurs Danois de l'observation des articles de l'ordonnance du 4 Mai 1803, qui ont trait à les passeports. Aussi par une nouvelle loi du 13 Mars de l'année courante, dont je joins ici un exemplaire, plusieurs de ces mêmes articles ont été abolis ou modifiés ; l'article 2 de la loi du 13 Mars ne demandant comme preuve de la nationalité d'un navire de commerce que le document dit "certificat de nationalité ou d'enregistrement" qui constate que le navire a été porté sur la registre des bâtiments qui sont en possession du droit de naviguer sous pavillon Danois.

À l'exception de ce document tout navire enregistré n'est tenu d'après ce même article, d'avoir à bord, soit en temps de guerre soit en temps de paix, que le rôle d'équipage, le certificat d'expédition de douane et les papiers relatifs à la cargaison.

Afin de prévenir l'abus du pavillon Danois à couvrir des articles de contrebande de guerre l'article XIII. de l'ordonnance du 4 Mai 1803 donne une énumération des objets qui doivent être considérés comme appartenant à cette catégorie, lorsqu'ils sont destinés aux puissances belligérantes ou à leurs sujets.

Par l'article XIV. il est interdit aux capitaines de commerce de transporter dans leurs navires les articles de contrebande mentionnés dans l'article précédent, à moins qu'il ne soit dûment constaté qu'ils sont destinés à être importés dans un port neutre. Si tel est le cas l'armateur et le capitaine du navire, au moyen duquel le transport des marchandises se fait, sont obligés à observer les formalités que précise le même article pour qu'il soit démontré que les marchandises ont été réellement importées dans le port neutre.

L'article XV. enjoint aux capitaines des navires de commerce de respecter les publications du Gouvernement du Roi relatives à la notification qui lui a été faite du blocus d'un port d'une des puissances belligérantes. Si les capitaines n'ont pas eu connaissance du blocus par des publications de cette nature et qu'ils se soient approchés du port bloqué, l'article XV. les invite à se conformer également aux avis que les chefs des vaisseaux de blocus leur en donneraient sur les lieux mêmes.

Je me permettrai encore d'ajouter que d'après l'article XVIII. de l'ordonnance dont il s'agit, les armateurs et les capitaines de navire qui contreviendraient aux dispositions de cette loi sont nonseulement privés du droit de réclamer la protection du Gouvernement du Roi contre les mesures coercitives que les puissances belligérantes pourraient prendre vis-à-vis d'eux, mais ils peuvent en outre être condamnés par les tribunaux du pays à des peines plus ou moins graves selon la nature des contraventions qui leur sont imputées.

Espérant que les observations que je viens de vous



présenter satisfèront à la demande qui m'a été faite, je profite de cette occasion &c. &c. &c.

(Signed) FRYB FRYSENBOEG.

A Monsieur Ford, Chargé d'Affaires  
de Sa Majesté Britannique.

**RULES FOR THE GUIDANCE OF MERCHANTS AND  
SHIP MASTERS IN TIME OF HOSTILITIES  
BETWEEN MARITIME POWERS.**

We Christian VII. by Grace of God King of Denmark and Norway, the Goths and Vandals, Duke of Sleswig, Holstein, Stormarn, Ditmarch, and Oldenburg :

Make known,—Although we, by several previous resolutions, fixed the rules according to which our traders and seafaring subjects should be guided when war broke out between foreign maritime powers, we have, nevertheless, found it necessary under the present circumstances to make one condensed enactment, embodying those parts of these former resolutions, that they may hereafter serve as a rule of guidance for these our subjects, and become publicly known ; and also so that no Danish subject shall plead ignorance of his duties in these respects, it is our gracious will that the following enactments hereafter shall alone be followed and accurately conformed to by all and every one who wishes to share in the advantages which our neutral flag in time of war will give to their lawful trading and maritime speculations ; and to this end we hereby annul and declare void all our former enactments. We order and command as follows :—

Article I.—Those our trading and seafaring subjects who wish to send any of their ships to sea to any foreign places to which the effects of the war have or may reach, shall be bound (always in conformity with the rules and regulations laid down in the following law) to acquire a royal Latin sea pass or permit, as well as the other ship's documents and papers exacted by law. To this end, on the breaking out of hostilities between foreign powers, it will be necessary to decide and make known for what places it is considered necessary that ships should be provided with our Latin sea pass.

Article II.—The pass cannot be obtained before the owner of the ship for which it is required has provided himself with the necessary ship's certificate in proof of his lawful right of ownership.

Article III.—No one can obtain a ship's certificate who is not our subject, either by birth in our kingdoms and countries, or who, before the breaking out of hostilities between any of the maritime powers of Europe, was in full possession of the rights of citizenship, either in our or other neutral states. In all cases the owner of a ship for which a certificate is demanded shall be domiciled in some place in our kingdoms and countries.

Article IV.—He who, according to the foregoing articles, is entitled to obtain or claim a ship's certificate, shall, in order to receive the same, present himself to the magistrate or authorities of the city or place to which the ship belongs, or where the principal number of its owners are domiciled, where either they, or at least the chief owner, has, in person or by means of a written and signed oath, declared that the ship belongs to him, or to one or more of our subjects, and that the ship for which the certificate is demanded has no contraband of war on board destined for the use of the belligerent powers or their subjects.

Article V.—No one, on the breaking out of hostilities, shall be permitted to command a ship provided with our royal sea pass who may have been born in any of the countries of the belligerent powers, unless he, before the breaking out of hostilities, shall have acquired rights of citizenship in our kingdoms and countries.

Article VI.—Every ship master who will command a ship furnished with our royal Latin sea pass must have acquired citizenship at some place in our kingdoms and countries.

He is bound constantly to have his letter of citizenship with him on board. As a security that he undertakes nothing that may be in contradiction with the provisions of this our enactment, he shall be bound, before departure from the harbour where he receives the pass, to take an oath that nothing with his will shall be undertaken whereby the pass and certificate given to him shall be misapplied.

Such oath made by the master shall accompany the owner's application for the delivery of the permit. But when, on account of the absence of the ship's master, this cannot be accomplished, the owner shall state the fact, and then our consul or commercial agent in the district where the master happens to be shall be answerable that when the master receives the permit he shall take the required oath.

Article VII.—On ships which are to be furnished with the royal Latin sea pass, no supercargo, factors, clerks, or other ship's officials who are subjects of the belligerents shall be permitted on board.

Article VIII.—Half the crew, including the mate, shall consist of the subjects of our kingdoms and countries. Should it happen that a crew in a foreign country, through desertion, death, or sickness, become incomplete, so that it is impossible for the master to comply with this enactment, he shall be permitted to engage as many foreigners (especially subjects of neutrals) as may be required to continue the voyage ; however, in no case shall the number of the subjects of the belligerents who may be on board the ship exceed a third part of the crew.

Every change connected with such alterations in the crew, together with the reasons calling for them, shall be carefully entered by the captain on the ship's articles, which shall be attested each time and signed by our consul or commercial agent, or their deputies resident in the ports the ship may put into, and such endorsement shall serve as a justification for the master in all subsequent contingencies.

Article IX.—Besides the ship's certificates mentioned in Article II., the following ship's documents shall always be found on board the ship :—

The shipbuilder's certificate, and, inasmuch as he who built the ship may later have sold it to another then also the bill of sale or title deed shall be present.

The documents, on application for the delivery of the pass, shall be sent by the owner to the proper authorities, accompanied by the certificate, in proof of the ship's lawful right to claim the certificate.

The royal Latin sea pass, with the accompanying translation.

Measure bill, or certificate of measurement.

Articles of agreement and list of the crew, which must be properly attested by the competent authorities. Charterparties and bills of lading of the cargo ; and, lastly,

Custom-house clearance from the place where the cargo was taken in.

Article X.—The measure bill shall be delivered by the authorities of our kingdoms and countries properly authorized to measure ships. In case any of our subjects purchase a ship in a foreign port, our consul or commercial agent at the place shall be authorized to have the ship measured, and thereafter deliver to the master of the ship a provisional measure bill, which shall be considered valid until the ship arrives in one of our harbours where the ship can be properly measured and branded, and a permanent measure bill be made out, which shall remain with the ship.

Article XI.—It is forbidden to all and everyone, owners as well as shipmasters, to procure for themselves and to have on board duplicate ship's papers, or to carry a foreign flag, as long as they are sailing with papers and documents graciously given by us.

Article XII.—Our royal Latin sea pass is only valid for one journey, i.e., from the time the ship after receiving it quits its home port and until the time it returns to it ; unless the ship in the meantime by lawful sale has been transferred to another party, in which case the new owner must obtain the necessary passes and documents in his own name.

Article XIII.—According to ordinary received principles, the subjects of neutral powers cannot be permitted to have goods on board which can be considered as contraband of war when they are destined for the belligerent powers or their subjects, or already belong to them; so have we, the King, in order to prevent our flag being misused to cover or protect such carrying of contraband articles, and in order that no one in this respect shall excuse himself on the ground of ignorance, hereby and expressly decided what should be classed under the denomination of contraband of war. Hereafter the following articles and goods of all and every one our subject shall be considered as contraband of war:—Cannons, mortars, all kinds of weapons, pistols, bombs, grenades, cannon balls, and bullet guns, flint stones, fuses and tinder, gunpowder, saltpetre, sulphur, cutlasses, pikes, swords, fittings, cartouche boxes, saddles, and bridles; however, with the exception of such quantities of these articles as may be requisite for the protection of the ship or of its crew.

Besides one must in every respect conform to all special stipulations or positive contracts which we, the King, have agreed to with foreign powers in relation to the carrying of prohibited goods and properties in our subjects' ships, in which case the owner on receiving the pass will be furnished with special instructions for his guidance.

Article XIV.—Should a ship bound for a foreign port take in such goods which, if they were destined for any of the harbours or ports of the belligerent powers, would be considered as contraband of war, in addition to the oath which the owner and shipmaster would have to take before the proper magistrate or authority, the persons who load such ships and the master shall also be bound, in conformity with the invoice of the cargo or bills of lading, to draw up, besides the ordinarily required custom clearance, a special declaration which shall contain a classification of the merchandise in question, with their qualities and value, which declaration signed by the shipper and master shall be certified by the custom-house authorities at the place where the clearance is given.

The declaration thus attested shall without delay after the clearance of the ship be sent by our custom officials to the Chief Commissioners of Customs, and shall serve to control the correct arrival of the specified goods at their specified destination, provided they have not been lost by accident at sea or by capture. The control shall be carried out in the following manner:—The shipper of the goods in question shall procure a certificate from our consul or commercial agent at the place to which the ship is bound, or when we have no consul or commercial agent there, a certificate from the lawfully authorized local authorities certifying the due arrival and discharge of the merchandise in conformity with the declaration. This certificate shall be procured and sent in to the Home Office as soon as the ship arrives at its destination or reaches some home port.

Should the certificate not be forthcoming in a reasonable time proportionate to the length of the journey, our Home Office shall demand a declaration from the shipper to the effect that he declares on oath that he has received no information about the goods or the ship. Should the arrival of the ship and the discharge of the goods in question in a neutral port not be clearly proved, and no accident or violent capture have taken place to prevent the arrival and discharge, the shipper shall pay to the Treasury a fine of 20 rix dollars for every commercial last of the ship's burden; besides both owner and master shall be liable to an action at law.

Article XV.—No shipmaster shall sail to any port blockaded from the sea side by one of the belligerent powers, and he shall in every respect carefully pay attention and conform to the warnings communicated to him by the authorities relative to the blockade of ports. In case he, on sailing into any port (the blockade of which has not previously been brought to his knowledge), meets any ship carrying a flag of war

of any of the belligerent powers, and it is notified to him by the commanders that the port is really blockaded, he shall immediately retire from it without in any way seeking clandestinely to break the blockade.

Article XVI.—None of our subjects shall take service on board privateers, much less themselves arm or be interested in the arming of such ships; neither shall any owner or shipmaster allow his ship to be used for the transport of troops, weapons, or contraband of war, of whatsoever description. Should any shipmaster be unable to prevent his ship (through irresistible force) being misused as above mentioned, it shall notwithstanding be his duty to protest, and with all his power and by a formal act, against such violent proceeding which he has been unable to obviate.

Article XVII. When a merchantman, not sailing under convoy, is spoken with at sea by any armed vessel belonging to the belligerent powers who have the right of visitation, the shipmaster shall not oppose such visitation, if effected by the commander of such above-mentioned armed ship, but is bound on the contrary faithfully and without reserve to show all the documents appertaining to ship and cargo. Both the shipmaster, his officers and crew, are strictly forbidden to throw overboard or in any other way to destroy or conceal any documents or papers on board belonging to the ship or cargo, either before the visitation or whilst it takes place. When the protection of our flag of war is granted to merchandise, every shipmaster, before he is taken under convoy, shall exhibit his ship's papers to the chief of the convoy, and in every case most carefully conform to his orders.

Article XVIII. Should anyone, be he owner or master, act in contravention to these enactments, he shall lose his citizenship and the right to own or command ships; moreover, he shall be prosecuted according to law, and according to circumstances be punished either for perjury or for having infringed our royal mandates. On the other hand, we will cause to be respected and protect the lawful enterprises by land and sea of our faithful subjects, so long as they conform to the foregoing rules and regulations, to which end we have enjoined and ordered all our ministers and consuls, and other authorities in foreign parts to endeavour to their utmost to ward off and prevent any inconvenience or violence being suffered by our subjects, and in case such should have occurred then to aid the injured parties and endeavour to assist them to obtain justice and compensation. Likewise We, the King, will at all times graciously give our support to every just complaint which our subjects in the above respects may feel themselves called upon to lay before us.

Given at our Royal Palace at Copenhagen,  
May 4, 1803.

Under our Royal Hand and Seal,

CHRISTIAN R.

#### ROYAL DANISH CHANCELLERIE'S RESOLUTIONS OF MAY 20, 1823.

The Royal Department of Foreign Affairs has announced to this Chancery that, under date of the 30th of last month, it has pleased His Majesty the King graciously to resolve that it shall not be allowed to any privateer, of whatever nation, to remain in any Danish harbours or waters.

Only in case that such privateers, forced by pressing danger of storms, bad weather, or that pursuit by the enemy occasion dangers, seek refuge in a Danish port, then they shall be received and receive such help as humanity may dictate, but they shall be bound immediately the danger is over to put to sea again. Neither shall any privateer be permitted to send his prizes to Denmark, or to sell them there; and in the last-mentioned case, when privateers, forced by necessity, seek refuge in Danish ports, they shall neither unload nor load prizes they may bring with them, neither shall they sell these or their cargoes or any part of them in Danish harbours.

To this end it shall by public notice be stringently forbidden to all His Majesty's subjects to buy foreign privateers' prizes. When foreign men of war run into Danish harbours they may be obliged to bring the prizes they may have taken with them, and shall neither unload nor load them or sell them, wholly or partly, them or their cargoes.

In communicating this royal resolution, we will beg you kindly to communicate its contents to all the officials within your jurisdiction, that they may take cognizance of the same, and make known to all and everyone that they are stringently forbidden to purchase prizes brought in by foreign privateers.

Certified by the expediting Secretary in the Ministry of Justice, March 26, 1867.

#### INSTRUCTIONS FOR THE GUIDANCE OF COMMANDERS OF DANISH SHIPS OF WAR DURING THE CRIMEAN WAR.

1. At the station at which you are placed it is your duty, with the ship under your command, in the best manner to preserve good order on the coast and in the roads and harbours, to take measures that trade and navigation is carried on in its usual uninterrupted manner, without suffering molestations from the men-of-war who may be on the spot.

It is desirable that foreign men-of-war should always find Danish men-of-war in their neighbourhood, whenever they appear in our waters, and you will, therefore, as soon as you ascertain that foreign ships of war are in the waters of your station, approach them and follow their movements. The ship under your command should properly be considered as a guard ship in the station, for which reason you will also, when at anchor, fire off watch signals, &c.

2. You must show foreign men of war, of whatever nation they may be, with which you may come in contact, all possible attention and politeness, but you must abstain in every manner from giving them assistance, except such as humanity may call for, especially you must not assist them in their navigation, by procuring for them local pilots, or by other nautical assistance.

3. In cases where foreign men-of-war have communication with land, you will give over the keeping of order on shore to the proper police authorities or harbour officials, but you shall in word and deed render assistance everywhere where it may be required, and where conflicts may arise either by reason of misunderstandings, want of knowledge of the language, on the part of the one side or of the other, or on account of possibly exaggerated claims on the part of the foreign ships. You shall in these cases come forward as mediator to clear up matters, and indeed act as a reconciliator, but be at the same time decided and serious everywhere, where the question is to keep up or make good the right of the King's subjects and the neutrality of the Danish territory.

4. The Danish territory extends one Danish mile from the *terra firma* of the King's country (see the circular from the Ministry of August 18, 1810); excepted herefrom, however, is the Sound at Kronborg and the Elbe at Glückstadt, where Danish territory only stretches a cannon shot from land, or 3,000 ells.

5. It is the will of His Majesty the King that the ships of all nations shall be under the protection of Denmark when in Danish territory, and within its territorial limits, within which the Danish neutral rights must be maintained, so that the bringing up or visiting of ships, be they belligerent, neutral, or national, shall not be permitted within these territorial limits.

6. The bringing of prizes into Danish ports is forbidden. When prizes are anchored in open roads or off the coast of the Danish territory, it must be supposed that this occurs only from the force of circumstances; but you shall then request the bringer up or prize master to take away the prize as soon as possible, and you must watch with care that nothing is

sold or brought on shore or landed from the prize whilst it remains in Danish waters or territories.

The necessary warning in this respect shall be given in these cases as soon as possible to the proper authorities on shore.

7. If a ship of war or merchantman flying before an enemy seeks refuge in Danish territory, it is your duty to take it under your protection. It is to be hoped that a warning to the pursuing man-of-war (preferably by sending a boat with an officer on board, or, if necessary, by a warning signal,) will be sufficient to ward off such a breach of neutrality; but should, contrary to expectation, a seizure or bringing up take place in Danish territory, you have then only, by a protest framed in a decided but serious and polite tone, to make known to the commander of the foreign man-of-war that he has committed a breach of Danish neutrality and territorial rights.

You will thereupon, as soon as possible, report to your government what has taken place, and send a copy of the protest, together with a statement of the name of the ship and its commander, &c. &c.

8. When foreign ships of war wish to run into harbours within the limits of your station, you will watch that the ship conforms to the rules of the harbour, both as regards the local or general regulations, such, for instance, as discharging of gunpowder, putting out fires, &c. &c.

9. Privateers shall not be suffered within Danish territories, and still less shall they be permitted to run into any Danish harbour except in case of distress. It must then be stringently looked to that they deliver up gunpowder and weapons, and in every case conform to the police regulations of the harbour. Their stay in harbour shall not be suffered longer than absolutely necessary for their repairs.

If privateers should bring prizes into Danish territory they shall be immediately sent back.

Privateers, on refusing to comply with these orders in Danish territory, necessary force shall be applied to enforce compliance; but you must, before you have recourse to force, carefully convince yourself that the vessel in question is really a privateer and not a man-of-war, and if you consider it necessary you may, for this purpose, demand to see the commander's commission or patent.

10. Outside of the Danish territory the sea must be considered as open water, on which account you will look upon every act of belligerent ships taking place outside of our territories as not concerning you.

Should, however, foreign men-of-war, in open waters, but within sight of you, overhaul Danish merchantmen, you must try and obtain permission for such vessels to proceed on their course, but in these cases you can only come forward as mediator. If the foreign inspecting man-of-war declares it to be his duty to bring up such vessel and that this takes place on account of the ship being loaded with contraband of war bound for one of the belligerent's harbours, you cannot oppose it, but can only, as soon as possible, report the case to the proper government department. Should, contrary to expectation, a foreign man-of-war in your vicinity attempt to molest a Danish merchantman, for instance, by taking his crew, merchandise, provisions, or ship's space, or by attempting forcibly to take possession of the ship for his own purposes, such as the transport of sick or of booty, you must declare that as you consider yourself bound to protect your countrymen's liberty and right to unhindered sailing on the sea (a right which can only be limited by those general hindrances applying to all nations' ships in time of war), it is your duty, on behalf of Danish vessels, seriously and earnestly to protest against every act which exceeds these limits.

Should this remonstrance not be attended to, you will at once make a formal protest against the proceedings of such foreign man-of-war, in which protest you will, besides giving notice that you consider that his mode of procedure is unauthorized, and a breach

Danish  
mile = 5  
English  
miles.

2,000 yards.

of Denmark's recognized neutrality, hold him responsible for the consequences of such an act. In every case the master or owner of the merchantman shall receive full compensation and indemnity for the loss of property or time occasioned thereby. You will protect Danish trade everywhere, and in every case against privateers, and, if necessary, use force.

The object of these present instructions is to give you decided rules for your guidance in certain cases ; but the department has likewise hereby intended to give you a clue for action in all possible unforeseen contingencies, in which it will be your duty to act with tact and care, together with gravity and decision. As a rule for such unforeseen cases, the department advises you the strictest neutrality, by abstaining from any sign of partiality for either the one or the other belligerent, be it either by word or deed. You must take care to have respected the Danish neutrality rights and the keeping of good order within the territories, showing every external sign of politeness and

consideration in conformity with what the usages of ships of war require or call for.

TRADUCTION du § 76 du Code Pénal Civil du 10 Février 1866.

Celui qui sans y être autorisé par le Roi, entreprendrait de recruter des hommes pour servir dans une armée étrangère est puni de travaux forcés jusqu'à 6 ans, si le Royaume est engagé dans une guerre, et, si tel n'est pas le cas, d'une peine pouvant aller depuis deux mois de simple réclusion jusqu'à 2 ans de travaux forcés.

Le sujet qui sans la permission du Roi s'engagerait en temps de guerre au service d'une puissance étrangère n'étant pas en guerre avec le Danemark est possible de prison, ou, suivant la nature du cas, de travaux forcés jusqu'à l'année.

L'acte de recrutement est accompli depuis le moment où un individu est accepté pour le service étranger.

#### FRANCE.—No. I.

(Received from Her Majesty's Embassy at Paris.)

REPORT from M. Treitt, Counsel to the Embassy.

A l'honorable Monsieur Julian Fane, Ministre de S. M. B. à Paris.

MONSIEUR LE MINISTRE,

PAR votre lettre du 16 Février 1867, vous avez bien voulu me demander quels sont les lois, règlements, et autres moyens dont est armé le Gouvernement français pour empêcher en ses possessions les actes dont des belligérants pourraient se plaindre comme d'une violation des droits et devoirs de la neutralité.

Je m'empresse de vous répondre que les seuls textes applicables à la matière sont les articles 84 et 85 du Code Pénal, ainsi conçus :—

" Art. 84. Quiconque aura, par des actions hostiles non approuvées par le Gouvernement exposé l'Etat à une déclaration de guerre, sera puni du bannissement, et si la guerre s'en est suivie, de la déportation.

" Art 85. Quiconque aura par des actes non approuvés par le Gouvernement exposé des français à éprouver des représailles, sera puni du bannissement."

Vous voudrez bien remarquer la généralité des ces expressions, *quiconque*, *actions hostiles* ; le Législateur n'a pas voulu définir ce qu'il fallait entendre par *actions hostiles*, il en a laissée l'appréciation souveraine aux juges.

Il ne s'agit point dans les articles 84 et 85 du Code pénal, des machinations et manœuvres au profit d'une puissance étrangère, et ayant pour objet de provoquer des hostilités. Ces machinations pratiquées dans une intention et un but criminels, rentrent dans les différentes espèces de trahison, les quelles sont punies par les articles 76 à 83 du même code. Les articles 84 et 85 s'appliquent aux simples cas d'imprudence, de témérité, de négligence ; c'est moins l'intention que le fait matériel qui est puni. La loi ne voit que le résultat ; ainsi : " La France a-t-elle été exposée à une déclaration de guerre, la guerre a-t-elle été déclarée ? Les Français ont-ils été exposés à des " représailles ? " Ces seules questions résolues affirmativement entraîneront l'application d'une des peines si sévères prononcées par la loi et en outre le paiement de dommages-intérêts qui peuvent toujours être réclamés.

La gravité des circonstances le veut ainsi : même l'on avait proposé la peine de mort. Mais le législateur a pensé que la peine de la déportation suffisait pour exciter la prudence des citoyens dans leurs actes qui peuvent toucher à des belligérants (séance du Conseil d'Etat du 9 Janvier 1810.)

Il faut donc trois conditions pourqu'il y ait lieu à l'application des articles 84 et 85 du Code Pénal :

1°. Que l'action soit hostile.

2°. Que l'action n'ait pas été approuvée par le Gouvernement.

3°. Que la France a été exposée à une déclaration de guerre ou des Français exposés à des représailles.

Je précise ces trois circonstances parceque c'est le

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pouvoir judiciaire seul qui est appelé à les résoudre et à décider de la culpabilité.

Si les juges décident que telle action n'est point une action hostile, et par conséquent non-violatrice de la neutralité, le Gouvernement devra respecter cette décision et pourra l'opposer au belligérant qui se plaindrait.

Si devant les juges l'accusé excipait d'une approbation, soit tacite, soit expresse par le Gouvernement, l'action incriminée ne pourrait plus être punie.

Enfin, si l'action hostile n'avait pas pour conséquence des représailles ou une éventualité de guerre, elle cesse d'être criminelle.

Comme on les voit ces articles dégagent beaucoup la responsabilité du Gouvernement vis-à-vis d'un belligérant. Ils ont pour but, comme l'a dit un illustre magistrat, de sauvegarder la moralité et la dignité nationale. Dans l'antiquité on livrait les coupables ou prétendus coupables et on les abandonnait à la vengeance de la partie plaignante, aujourd'hui il n'en peut plus être ainsi, mais on a cherché des moyens pour donner satisfaction aux plaintes. C'est là que se trouve le principe des articles 84 et 85, car si ces articles n'existaient point on ne pourrait faire droit à de légitimes réclamations et il n'y aurait jamais que la guerre comme dernier argument.

Il n'y a que trois exemples marquants dans les annales de la jurisprudence de poursuites exercées en vertu des articles 84 et 85 du Code Pénal.

En 1824 un capitaine Français commandant un navire colombien avait enlevé un navire sarde et exposé les Français à des représailles.

En 1831 des individus habitant la frontière sont allés attaquer un poste des douanes sardes.

En 1834 des banquiers ont fait un emprunt et des fournitures d'équipement et de munitions au profit de Don Carlos engagé dans une guerre civile contra le Gouvernement espagnol.

Il ne faut pas s'étonner si ces cas sont si rares, les actes violateurs de la neutralité consistent généralement dans les livraisons d'engins et d'instruments de guerre. Or, en France les poudres et les armes de guerre ne jouissent point de la liberté commerciale et industrielle du droit commun : ces deux objets sont sous la surveillance rigoureuse du Gouvernement et il est fort difficile que l'on puisse armer des navires ou bien faire voyager ou effectuer des dépôts de poudre et d'armes de guerre sans que le Gouvernement ne soit averti et ne puisse les empêcher.

Il n'y a donc que les articles 84 et 85 qui puissent prévenir les violations de la neutralité, j'ai parcouru tout l'arsenal de nos lois ainsi que les auteurs qui ont traité de cette question ; j'ai examiné les lois concernant les prises maritimes, la piraterie et la traite des negres, je n'ai rien trouvé concernant votre question laquelle n'a trait qu'au droit privatif français relatif aux violations de la neutralité sur le territoire de la France et qu'il ne faut pas confondre avec les règles générales ou du droit des gens concernant la neutralité.

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A ce sujet il a été dit avec raison que souvent un fait grave d'hostilité n'amenera pas la guerre quand les deux pays seront en bonnes relations mais que souvent aussi le fait le plus simple peut apporter les plus sérieuses complications quand il y a des sentiments hostiles d'une part ou d'autre.

C'est donc par le résultat des actions incriminées que l'on applique les articles 84 et 85 ; cela est contraire aux notions ordinaires du droit pénal, car on dit communément que l'intention seule constitue le crime.

D'autres nations ont des dispositions analogues dans leurs lois pénales, l'article 136 du code prussien punit les nationaux qui exposent leur compatriotes à des représailles, et l'article 37 du Code du Brésil punit d'un emprisonnement d'une à 12 années celui qui compromet la paix de l'état et expose les Brésiliens à des représailles en dehors des cas de trahison qui sont comme dans la loi Française punis des peines les plus fortes.

Agréez,  
Paris le 20 Février 1867. (Signé) TREITT.

A l'honorable M. Julian Fane, Ministre plénipotentiaire de S.M.B.

Monsieur le Ministre,

Conformément à votre lettre de hier soir je m'empresse de vous adresser le texte des lois visées dans la déclaration de neutralité du Gouvernement français du 10 Juin 1861.

Je ne vous les avais point données dans mon avis du 20 Février dernier, parceque, sauf l'ordonnance sur la marine de 1681, ils ne touchent pas directement les violations de la loi de neutralité ; et puis je tenais à être court afin d'être lu et compris. Ce sont là

les motifs qui m'ont déterminé à ne citer que les articles 84 et 85 du Code Pénal dont les termes généraux comprennent tous les cas de violation de la neutralité.

Je n'avais pas à citer non plus la déclaration de neutralité du 10 Juin 1861, le Gouvernement français a dû la notifier officiellement au Gouvernement de la Reine.

Quant aux faits relatifs à l'Olynde, au Rapahannock et autres corsaires du Sud, ces faits avaient été l'objet de communications assez nombreuses avec Lord Cowley ; la presse les avait d'ailleurs signalés et je pensais qu'ils étaient parfaitement connus au Foreign Office.

Je vais faire des recherches pour savoir ce qui est advenu de chacun des corsaires signalés en France soit à l'état de construction seulement, soit à l'état naviguant et combattant ou pillant.

Dès que j'aurai pu recueillir mes renseignements, je m'empresserai de vous les transmettre ; mais dès à présent je crois pouvoir vous dire que, aucune de ces affaires de corsaires du Sud n'a été l'objet d'un débat retentissant et que toutes ont disparu de l'attention publique sans le moindre bruit.

La déclaration de neutralité de la France du 10 Juin 1861 admet encore les corsaires pendant vingt-quatre heures dans les ports français. Plusieurs puissances neutres ont été plus loin ; elles ont déclaré, dès l'année 1854, à l'occasion de la guerre de Crimée, qu'elles ne recevraient dans leurs ports les corsaires belligérants que dans le cas d'absolue nécessité.\*

Il y a là un progrès de la civilisation en attendant l'abolition universelle de la course.

Agréez, monsieur le ministre,  
Mon entier dévouement,  
TREITT.

## FRANCE.—No. II.

(Received from Her Majesty's Embassy at Paris.)

M. de Moustier, Minister for Foreign Affairs, to Mr. Fane.

MONSIEUR, Paris, le 26 Février 1867.

PAR votre lettre du 16 de ce mois, vous me priez de vous faire connaître les lois et les règlements qui existent en France au point de vue des actes que les belligérants peuvent considérer comme une violation des devoirs de la neutralité, la Commission nommée par la Reine pour l'examen des lois de neutralité désirant d'obtenir des informations à ce sujet.

Je m'empresse de répondre à cette communication.

A proprement parler, il n'y a pas de disposition dans la législation Française qui marque d'une manière précise les limites de la neutralité à observer entre deux puissances étrangères qui sont en état de guerre, les questions de cette nature étant d'un caractère mixte et trouvant leur solution dans les principes généraux du droit international.

Il y a cependant dans le Code Pénal Français deux dispositions qu'on peut invoquer comme se référant à la neutralité : ce sont les articles 84 et 85 qui punissent les actes commis par des individus qui exposeraient l'Etat à une déclaration de guerre ou les Français à éprouver des représailles.

L'article 21 du Code Napoleon interdit aussi à tout Français de prendre du service à l'étranger sans autorisation.

A un point de vue plus spécial on peut citer ; l'article 3 de la loi du 10 Avril 1825 qui punit comme pirate le Français qui prend Commission d'une puissance étrangère pour commander un navire armé en course ;

L'article 67 du décret disciplinaire sur la Marine Marchande du 24 Mars 1852 qui interdit au marin Français de prendre du service sans autorisation sur un navire étranger ;

Certains paragraphes des articles 313, 314, et 315 du Code de Justice Militaire pour l'armée de mer relatifs à la désertion à l'étranger.

L'Ordonnance du 12 Juillet 1847, et la loi du 14 Juillet 1860 sur les armes de guerre.

L'article 2 de la loi du 16 Mai 1863, qui prohibe la sortie des munitions de guerre.

J'ai l'honneur de vous transmettre ci-joint le texte des dispositions sus mentionnées.

Agréez, &c.  
M. Julien Fane. (Sd.) MOUSTIER.

No. 13,715. Ordonnance du Roi concernant la fabrication ou la confection des Armes et Munitions de guerre pour l'usage des Navires le Commerce.

A Neuilly, le 12 Juillet 1847.

Louis-Philippe, Roi des Français, à tous présents et à venir, salut :

Vu les lois des 22 Août 1791, 4 Germinal an II., 19 Thermidor an IV., 24 Mai 1834, et 6 Mai 1841 ;

Notre Conseil d'Etat entendu ;

Sur le rapport de notre Ministre Secrétaire d'Etat au Département de la Marine et des Colonies ;

Nous avons ordonné et ordonnons ce qui suit :

Art. 1<sup>er</sup>. Conformément à l'article 3 de la loi du 24 Mai 1834, tout individu qui voudra fabriquer ou confectionner des armes de guerre, pour l'usage des navires de commerce, devra en obtenir préalablement l'autorisation de notre Ministre Secrétaire d'Etat au Département de la Guerre, quant aux armes portatives, et de notre Ministre Secrétaire d'Etat Département de la Marine et des Colonies, quant aux bouches à feu et aux munitions.

La demande en autorisation énoncera le nombre ou la quantité, l'espèce et le calibre des armes ou munitions de guerre que l'on se proposera de fabriquer ou confectionner.

Les maîtres de forges devront joindre à leur demande

\* Ordonnance du Sénat de Hambourg du 26 Avril 1854 ; Ordonnance du Sénat de Lubeck du 28 Avril 1854, de Lubeck à la même date ; du Gouvernement d'Oldenbourg du 20 Avril 1854 ; du roi de Suède 8 Avril ; du Danemark 20 Avril ; du Mecklenbourg 26 Avril ; du Hanovre 5 Mai ; des Deux Siciles 17 Mai ; de Toscane 3 Juin ; de Belgique 25 Avril ; Des îles Sandwich 17 Juillet 1854.



les plans cotés des bouches à feu, et faire connaître l'espèce de fusion et de moulage qu'ils se proposeront d'employer.

2. Lorsque l'autorisation sera accordée, il en sera donné avis au préfet du département où se trouveront situés les établissements ou ateliers dans lesquels seront fabriquées ou confectionnées les armes ou munitions de guerre auxquelles se rapportera cette autorisation.

3. Les armes et munitions de guerre destinées aux navires de commerce ne pourront sortir des ateliers de fabrication, ni être expédiées aux ports de destination, qu'en vertu d'une autorisation du préfet du département.

L'autorisation du préfet énoncera le nombre ou la quantité et la nature des objets expédiés, l'itinéraire à suivre et le délai dans lequel ils devront être transmis à leur destination; les conducteurs du chargement seront tenus de produire l'autorisation à toute réquisition.

4. A leur arrivée au port de destination, les armes de guerre seront placées dans un magasin ou dépôt de la marine, ou de l'un des autres services publics de l'état; elles y resteront sous la surveillance du chef de service.

5. Avant d'être livrées au commerce, les armes seront éprouvées conformément aux instructions qui seront données par notre ministre secrétaire d'état au département de la guerre pour les armes portatives, et par notre ministre secrétaire d'état au département de la marine et des colonies pour les bouches à feu.

6. La réception ou le rejet des armes de guerre sera prononcée par l'officier qui aura procédé aux épreuves; en cas de rejet, il sera délivré expédition du procès-verbal au fabricant; s'il y a réclamation de sa part, il en sera référé au ministre, qui statuera définitivement.

7. Les frais de visite, d'épreuve, de réception, de transport, et d'entretien des armes seront à la charge des fabricants.

Les frais déplacement de l'officier d'artillerie qui procédera à l'épreuve et des agents sous ses ordres seront supportés par l'état.

8. Aucune arme de guerre ne pourra être extraite du dépôt, que lui sera affecté qu'en vertu d'une autorisation du chef du service de la marine, à qui le fabricant ou son représentant devra préalablement déclarer les noms des armateurs des navires pour lesquels ladite arme sera destinée.

Une expédition de l'autorisation sera immédiatement transmise par le chef du service de la marine au receveur des douanes du port d'armement.

9. Les cartouches et autres munitions de guerre seront placées dans le dépôt mentionné à l'article 4, et ne pourront en être retirées qu'au départ du navire, et en se conformant aux dispositions indiquées ci-après.

10. Aucune arme de guerre ne pourra être embarquée sur les navires du commerce qu'en vertu d'une autorisation du chef du service de la marine du port d'armement, laquelle déterminera aussi, en raison de la nature et de la durée présumée du voyage, les quantités de munitions qui pourraient être embarquées.

11. Le chef du service de la marine veillera à ce qu'il ne soit embarqué sur chaque navire que le nombre d'armes de guerre que comporteront sa force et celle de l'équipage, et à ce que les bouches à feu soient réellement montées en batterie.

12. Les armateurs souscriront, entre les mains du receveur des douanes du port d'embarquement, l'engagement cautionné, de rapporter et de représenter les armes et munitions de guerre qu'ils auront été autorisés à embarquer, sauf par eux à justifier, ou moyen de procès-verbaux signés par tous les officiers et au moins trois des principaux marins d'abord, de la perte de tout ou partie des armes ou de l'emploi de tout ou partie des munitions embarquées; l'accomplissement de cette obligation sera constaté au moyen d'une vérification qui sera faite par les soins des agents de la marine, concurremment avec ceux des douanes, au retour du navire.

A cet effet, le rôle d'équipage devra toujours mentionner exactement le nombre, l'espèce, le calibre, et la valeur des armes, ainsi que la quantité, l'espèce, et

la valeur des munitions qui auront été embarquées à l'armement.

13. Au désarmement du navire, les armes et munitions de guerre existant à bord entreront au dépôt dont il est fait mention à l'article 4; néanmoins le chef du service de la marine pourra autoriser l'armateur ou son représentant à conserver l'artillerie à bord.

14. Toute infraction aux dispositions de l'article 12 sera poursuivie conformément aux lois sur l'exportation des armes et munitions de guerre.

Dans ce cas, les poursuites auront lieu à la diligence des agents de l'administration des douanes.

15. Toute infraction aux autres dispositions contenues dans la présente ordonnance, notamment aux articles 1, 3, 4, 8, 9, 10, et 13, sera poursuivie conformément à la loi du 24 Mai 1834.

16. Nos ministres secrétaires d'état aux départements de la guerre, de la marine et des colonies, et des finances, sont chargés, chacun en ce qui le concerne de l'exécution de la présente ordonnance.

Donné à Neuilly, le 12 Juillet 1847.

(Signé) LOUIS-PHILIPPE.

Par le Roi : le Pair de France, Ministre Secrétaire d'Etat de la marine et des colonies,

(Signé) DUC DE MONTEBELLO.

N<sup>o</sup>. 7853. Loi sur la Fabrication et le Commerce des Armes des Guerre, du 14 Juillet 1860.

Napoléon, par la grâce de Dieu et la volonté nationale, Empereur des Français, à tous présents et à venir, salut :

Avons sanctionné et sanctionnons promulgué et promulguons ce qui suit :

LOI.

EXTRAIT DU PROCÈS DU CORPS LÉGISLATIF.

Le Corps Législatif a adopté le projet de loi dont la teneur suit :

*Titre I. De la fabrication et du Commerce des armes ou des pièces d'armes de guerre.*

Art. 1<sup>er</sup>. Toute personne peut se livrer à la fabrication ou au commerce des armes ou des pièces d'armes de guerre, en vertu d'une autorisation donnée par le ministre de la guerre, et sous les conditions déterminées par la loi ou par les règlements d'administration publique.

Les armes ou les pièces d'armes de guerre fabriquées dans les établissements autorisés ne peuvent être destinées qu'à l'exportation, sans le cas de commandes faites par le ministre de la guerre pour le service de l'Etat.

2. Les armes de guerre sont celles qui servent ou qui ont servi à armer les troupes Françaises ou étrangères.

Peut être réputée arme de guerre, toute arme qui serait reconnue propre au service de guerre et qui serait une imitation réduite ou amplifiée d'une arme de guerre.

Les armes dites *de bord* ou *de troque* sont considérées comme armes de guerre et soumises aux mêmes règles.

3. L'autorisation mentionnée en l'article 1<sup>er</sup> ne peut être retirée, par le ministre de la guerre, que lorsque le fabricant ou le commerçant a encouru une condamnation, devenue définitive, soit par application des articles 13 § 2, 14 § 2, 15, et, 16 de la présente loi, soit pour contravention à celle du 24 Mai 1834, soit pour crimes et délits prévus,

1<sup>o</sup>. Par les articles 86 à 101, 209, 210, 211, 215, et 216 du Code Pénal;

2<sup>o</sup>. Par la loi du 7 Juin 1848, sur les attroupements;

3<sup>o</sup>. Par les articles 1 et 2 de la loi du 27 Juillet 1849;

4<sup>o</sup>. Par les articles 1, 2, and 3 de la loi du 27 Février 1858.

4. Tout fabricant ou commerçant autorisé est tenu d'avoir un registre, coté et paraphé à chaque feuille par le maire, sur lequel sont inscrites, jour par jour,

l'espèce et la quantité des armes ou des pièces d'armes de guerre qu'il fabrique, achète ou vend, avec indication de leur destination et des noms et domiciles des vendeurs ou des acheteurs.

Le maire vise et arrête ce registre au moins une fois tous les mois ; en cas d'absence ou d'empêchement, il peut se faire suppléer par le commissaire de police.

5. Le ministre de la guerre, et en cas d'urgence, les généraux commandant les divisions ou les subdivisions militaires prescrivent, relativement aux dépôts d'armes ou de pièces d'armes de guerre qui existent dans les magasins des fabricants ou commerçants, les mesures que peut exiger l'intérêt de la sûreté publique.

6. Tous les canons d'armes de guerre destinés au commerce extérieur sont soumis à des épreuves constatées par l'application d'un poinçon.

Ces canons reçoivent, en outre, une marque dite d'exportation.

#### *Titre II. De l'importation, de l'exportation, et du transit des armes ou des pièces d'armes de guerre.*

7. Toute importation d'armes de guerre et de canons ou d'autres pièces d'armes de guerre est interdite, à moins qu'elle ne soit autorisée ou ordonnée par le ministre de la guerre.

8. Des décrets déterminent ceux des entrepôts de douane dans lesquels les armes ou les pièces d'armes de guerre de provenance étrangère peuvent être exclusivement déposées.

Ces armes ou ces pièces d'armes peuvent, dans l'intérêt de la sûreté publique, être soumises aux mesures autorisées par l'article 5.

9. L'exportation des armes ou des pièces d'armes de guerre est libre, sous les conditions déterminées par la loi ou par les règlements d'administration publique.

Néanmoins un décret impérial peut interdire cette exportation par une frontière, pour une destination et pour une durée déterminées.

Des décrets désignent les bureaux de douane par lesquels l'exportation peut s'opérer.

Quand l'exportation est interdite pour certaines destinations, les exportateurs doivent, sous les peines portées par l'article 4 du titre III de la loi due 22 Août 1791, justifier de l'arrivée des armes à une destination permise, au moyen d'acquits-à-caution qui sont délivrés, au départ, par les soins de l'administration des douanes, et qui sont déchargés, à l'arrivée, par les agents consulaires de France.

10. Les armes ou les pièces d'armes de guerre ne peuvent transiter, ni être expédiées en mutation d'entrepôt ou en re-exportation, sans un permis du ministre de la guerre.

Si l'exportation est interdite pour une destination, les permis de transit délivrés pour cette destination, antérieurement au décret qui prononce l'interdiction, sont annulés de droit.

11. L'importation, dans les cas où elle est autorisée ou ordonnée par le ministre de la guerre, l'exportation et le transit, ainsi que la circulation et le dépôt des armes ou des pièces d'armes de guerre, dans le rayon des frontières, restent soumis aux dispositions législatives ou réglementaires sur les douanes.

#### *Titre III. Dispositions pénales.*

12. Quiconque, sans autorisation, se livre à la fabrication, ou au commerce des armes ou des pièces d'armes de guerre, est puni d'une amende de seize francs à mille francs et d'un emprisonnement d'un mois à deux ans.

Les armes ou pièces d'armes de guerre fabriquées ou exposées en vente sans autorisation sont confisquées.

Les condamnés peuvent, en outre, être placés sous la surveillance de la haute police pendant un temps qui ne peut excéder deux ans.

En cas de récidive, ces peines peuvent être portées jusqu'au double.

13. Le fabricant ou le commerçant qui ne s'est pas conformé aux dispositions de l'article 4 de la présente loi est puni d'une amende de seize francs à trois cents

francs et d'un emprisonnement de six jours à trois mois.

En cas de récidive, le peine peut être portée jusqu'au double.

14. Tout fabricant ou commerçant qui ne s'est pas conformé aux dispositions de l'article 6, est puni d'une amende de seize francs à trois cents francs. Les canons saisis sont confisqués.

En cas de récidive, l'amende peut être portée jusqu'au double.

15. La contrefaçon du poinçon d'épreuve ou du poinçon d'exportation et l'usage frauduleux de poinçons contrefaits sont punis d'une amende de cent francs à trois mille francs et d'un emprisonnement de deux ans à cinq ans.

16. Est puni d'une amende de seize francs à cinq cents francs et d'un emprisonnement d'un mois à deux ans quiconque, s'étant indûment procuré les vrais poinçons mentionnés en l'article précédent, en a fait usage.

17. Dans tous les cas prévus par la présente loi, il pourra être fait application de l'article 463 du Code Pénal.

#### *Titre IV.—Dispositions Générales.*

18. Des règlements d'administration publique déterminent notamment les formes des demandes d'autorisation en matière de fabrication et de commerce des armes de guerre ; le régime et le tarif des épreuves et des marques ; les formalités auxquelles doit être assujéti le transport des armes à l'intérieur ; enfin toutes les mesures relatives à la surveillance de la fabrication et du commerce des armes de guerre.

19. Il n'est dérogé ni à la loi due 24 Mai 1834, ni aux lois et règlements concernant les armes de chasse et de luxe et les armes prohibées.

20. Sont abrogées toutes dispositions contraires à celles de la présente loi.

Délibéré en séance publique, à Paris, le 20 Juin 1860.

Le Président,  
(Signé) COMTE DE MORNAY.  
Les Secrétaires,  
(Signé) COMTE LOUIS DE CAMBACÉRÈS,  
COMTE LEOPOLD LETTON,  
COMTE JOACHIM MURAT.

#### *EXTRAIT DU PROCÈS-VERBAL DU SÉNAT.*

Le Sénat ne s'oppose pas à la promulgation de la loi concernant la fabrication et le commerce des armes de guerre.

Délibéré et voté en séance, au Palais du Sénat, le 30 Juin 1860.

Le Président,  
(Signé) TROPLONG.  
Les Secrétaires,  
(Signé) A. LAITY,  
COMTE DE GROSSOLLES-  
FLAMARENS.  
BARON T. DE LACROSSE.

Vu et scellé du sceau du Sénat :

Le Sénateur Secrétaire,  
(Signé) BARON T. DE LACROSSE.

Mandons et ordonnons que les présentes, revêtues du sceau de l'état et insérées au bulletin des lois, soient adressées aux cours, aux tribunaux et aux autorités administratives, pour qu'ils les inscrivent sur leurs registres, les observent et les fassent observer, et notre ministre secrétaire d'état au département de la justice est chargé d'en surveiller la publication.

Fait au Palais de Saint-Cloud, le 14 1860.

(Signé) NAPOLEON  
Par l'Empereur

Le Ministre d'Etat  
(Signé) ACHILLE FOULD.

Vu et scellé du grand sceau :  
Le garde des sceaux, Ministre Secrétaire d'Etat au  
Département de la Justice,  
(Signé) DELANGLE.

## FRANCE.—No. III.

(Received from Her Majesty's Embassy at Paris.)

REPORT from M. Treitt, Counsel to the Embassy.

A l'honorable M. Julian Fane, M. P. S. M. B.

M. LE MINISTRE,

CONFORMEMENT à votre lettre du 25 Février 1867, j'ai déjà eu l'honneur de vous remettre les textes de la loi dont le Gouvernement Français est armé pour empêcher ses nationaux de violer les lois de la neutralité vis-à-vis des belligérants; je viens aujourd'hui vous dire l'état des procédures et des mesures administratives qui ont surgi à l'occasion de six navires qui ont été construits en France, et qui étaient destinés à devenir des corsaires confédérés.

Le 15 Avril 1863 un contrat a été signé entre M. Arman, constructeur maritime à Bordeaux et député au Corps Législatif, d'une part, et d'autre part M. James Dunwold Bullock, agissant par mandat resté alors secret pour le compte du Gouvernement confédéré.

Les conventions portaient que s'agissant d'établir une communication régulière par bateaux-à-vapeur entre Shang-hai, Osaka, Yeddo, et San Francisco, passant par la détroit de Van Diemen, M. Arman s'engageait à construire quatre steamers de très-grande vitesse, portant 12 jours de combustible et pouvant recevoir un armement de 12 à 14 pièces de canon afin de pouvoir protéger leurs passagers et leurs cargaisons dans ces mers lointaines, en un mot, ils devaient réunir les principales conditions des corvettes de guerre de la marine Française.

Mr. Arman devait construire lui-même deux des bâtimens à Bordeaux à 400 chevaux de force et de 1,550 tonneaux. Il était autorisé à confier la construction des deux autres bâtimens à M. Voruz, constructeur à Nantes, et aussi député au Corps Législatif. Les quatre bâtimens devaient être prêts à faire leurs essais dans un délai de 10 mois. Le prix de chacun a été fixé à 1,800,000 francs, payables par cinquièmes pendant la construction. L'artillerie, les armes, les projectiles, les poudres restaient à la charge de M. Bullock.

Le 15 Juillet 1863 il fut signé un second contrat entre les mêmes personnes pour la construction de deux béliers à vapeur cuirassés et munis de deux blokhauts blindés. Les conditions du contrat étaient les mêmes. si ce n'est le prix qui a été stipulé pour chaque bélier à 2,000,000 francs. Le banquier de M. Bullock était M. Erlanger. De plus, la destination de ces deux béliers n'était pas indiquée.

La construction commença immédiatement à Bordeaux et à Nantes, chez MM. Jollet et Babin et aussi chez MM. Dubigeot et Fils. Les machines furent confiées à MM. Mazeline et Cie. au Havre.

Je cite tous ces noms parceque plus-tard on les trouva englobés dans un procès que le Président des Etats-Unis a intenté à ces différentes personnes.

Les navires furent rapidement achevés, et M. Arman, conformément à l'ordonnance du 12 Juillet 1847, s'adressa au Ministre de la Marine pour obtenir l'autorisation d'armer les quatre navires de 12 à 14 canons, navires, disait-on, destinés à une ligne de steamers dans les mers de Chine et la Mer Pacifique. L'autorisation fut accordée le 6 Juin 1864; deux des navires avaient été lancés à Nantes en Avril. Mais alors intervient M. Dayton, Ministre des Etats-Unis. Par ses actives demandes il apporta aux Ministres de la Marine et des Affaires Etrangères la preuve que les navires commandés à M. Arman par M. Bullock étaient destinés à devenir des corsaires du Sud probablement; le Gouvernement fit aussi une enquête, et le 22 Octobre le Ministre de la Marine, malgré les dénégations apportées dans toute cette affaire, retira à MM. Arman et Voruz l'autorisation qu'il leur avait précédemment donnée d'armer les navires.

Qu'allaient devenir ces navires? Les amis de l'Amérique du Nord s'en inquiétaient alors considérablement et craignaient qu'à l'aide de ventes fictives ils ne quittassent la France pour arborer en pleine mer le pavillon confédéré, puisque c'est ainsi que "l'Alabama," "la Florida," "la Géorgia," et "le Rapahannock" avaient trompé la vigilance des autorités Anglaises.

Il s'était établi une polémique assez vive dans la Presse à ce sujet.

Voici quel a été le sort des six navires dont la construction avait été confiée à M. Arman, avec le concours des personnes ci-dessus dénommées, je crois que mes informations sont exactes.

"Le Yeddo" et "le Osaka," construits à Bordeaux, ont été vendus à la Prusse.

"Le Shanghai" et "le San Francisco" ont été vendus en Pérou.

L'un des béliers, "le Chéops," a été vendu à la Prusse, l'autre "le Sphinx," avait été vendu au Danemark et conduit à Copenhague.

Mais le Gouvernement Danois (sous j'ignore quel prétexte) refusa d'en prendre livraison.

On lui donna alors le nom "d'Olynde," et muni d'un équipage Danois, pourvu de papiers de bord réguliers en destination de Bordeaux le navire fut ramené sur les côtes de France.

Il s'arrêta dans la petite ile d'Houat, à quelques lieues en mer à l'ouest de Quiberon. Là il fut accosté par deux navires, l'un lui apporta une provision de charbons; l'autre "The City of Richmond," le pourvut de canons, de munitions, et d'un équipage confédéré. "L'Olynde" alla successivement à la Corogne, à Lisbonne, aux Azores, à Cuba, et à la Havanne où il tomba aux mains des Américains du Nord.

Celle est l'histoire des six corsaires confédérés commandés en France; les agents Américains ne les ont point perdus de vue pendant un jour, le Gouvernement Français a fait droit à leurs dénonciations, et c'est ainsi que le Gouvernement Américain n'a pas jusqu'à présent adressé de réclamations à la France. Celle-ci même a surveillé très-attentivement "le Rapahannock" pendant le temps qu'il est resté dans les eaux de Calais, ville d'où il s'est inopinément enfui. La France n'a donc pas à répondre des faits du "Rapahannock," qui figure dans le chapitre des réclamations concernant l'Angleterre.

Mais si le Président des Etats-Unis ne s'est pas adressé au Gouvernement Français, il a intenté directement un procès à MM. Arman, Voruz, Jollet, Barbin, Dubrigeon, Marzeline, Erlanger à tous ceux enfin qui ont pris une part quelconque à la construction ou mise en état des six navires, *futurs corsaires*. Il leur réclame tant comme répétition que comme dommages intérêts une somme de 2,880,000 francs, qu'ils auraient reçue à valoir sur le prix de navires commandés.

Son action est fondée sur les trois articles suivants du Code Napoléon:

Art. 1,376.—Celui qui reçoit par erreur ou sciemment ce qui ne lui est pas dû, s'oblige à le restituer à celui de qui il l'a indûment reçu.

Art. 1,382.—Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.

Art. 1,383.—Chacun est responsable du dommage qu'il a causé, non seulement par son fait, mais encore par sa négligence ou son imprudence.

Le premier de ces trois articles statue sur le droit de réclamer ce qui a été payé sans être dû. Or le contrat entre M. Arman et M. Bullock étant nul comme contraire à la loi Française, il n'était rien dû en vertu de ce contrat, et ce qui a été payé doit être restitué.

Quant aux deux autres articles, ils règlent le principe des dommages, intérêts dus par le fait ou l'imprudence des défendeurs.

Telle sera, dit-on, l'argumentation sur laquelle s'appuiera la demande du Président des Etats-Unis.

Mais jusqu'à présent le procès en est encore aux préliminaires.

La loi Française autorise les défendeurs à réclamer des demandeurs *quand ils sont étrangers* la caution *judicatum solvi* pour assurer le paiement des frais du procès.

Devant le tribunal de première instance MM. Arman et consorts ont demandé le dépôt de 150,000 francs pour une caution *judicatum solvi*, à raison des frais du fisc et autres très-considérables que le procès occasionera.



M. le Président a offert de déposer seulement 5,000 francs.

Mais le tribunal a maintenu le chiffre demandé de 150,000 francs.

M. le Président des Etats-Unis a interjeté appel de cette décision.

La Cour Impériale jugeant en appel a également maintenu les 150,000 francs.

Maintenant le Président des Etats-Unis ne pourra donner suite à son procès qu'après avoir déposé cette somme dans une caisse publique.

Ce procès ne sera guères plaidé avant trois mois.

Agréé, etc.,  
(Signé) TREITT.

Paris, le 3 Mars 1867.

#### FRANCE, No. IV.

MY LORD,

Paris, December 4, 1867.

I HAVE the honour to transmit to your Lordship a further report from M. Treitt on the subject of the action brought by the Government of the United States in the French Courts, against persons concerned in equipping armed vessels for the so-called Confederate States.

I have the honour to be, &c.

The Lord Stanley, M.P. (Signed) LYONS.

A son Excellence Lord Lyons, Ambassadeur de S.M.B. à Paris.

MILORD,

A la date du 20 Février et 13 Mars 1867 j'ai eu l'honneur de transmettre au Foreign Office les dispositions de la loi de France contre les violations de la neutralité, ainsi que des renseignements sur le sort des différents corsaires que les Etats du Sud avaient armés ou essayé d'armer pendant la guerre de la sécession en Amérique.

J'avais annoncé en même temps que les Etats-Unis devaient intenter un procès à plusieurs armateurs Français, pour les faire condamner par les tribunaux de France à restituer au Gouvernement de Washington tout l'argent que ces armateurs ont touché des agents du Sud, et de plus, à lui payer des dommages intérêts.

Ce procès est en ce moment pendant devant le tribunal de première instance à Paris, et il sera probablement plaidé dans le courant de l'année prochaine.\*

Je viens aujourd'hui mettre en relief les arguments sur lesquels les Etats-Unis basent leur action.

La demande se formule ainsi :—“Dès le commencement des hostilités entre le Nord et le Sud, le Gouvernement Français à affirmé sa neutralité par une déclaration insérée au Moniteur du 10 Juin 1861, par laquelle déclaration il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque; pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou à l'armement d'un navire de guerre ou corsaire de l'une des deux parties.”

Les contrevenants à ces défenses encourront les dispositions prévues par les lois, entre autres, les dispositions des articles sévères 84 et 85 du Code Pénal Français.

Une semblable déclaration avait été faite par l'Angleterre.

Néanmoins, les Confédérés du Sud trouvèrent en Angleterre et en France des gens fort empressés à violer les lois de leur patrie. Le Sud envoya en Angleterre les Capitaines Maury et Bullock sous la direction desquels furent armés et lancés sur les mers les corsaires l'Alabama et la Floride; mais le Gouvernement Anglais sur les énergiques réclamations des Etats-Unis, après avoir fait saisir l'Alexandra à Liverpool et le Pampero à Glasgow, finit par déclarer qu'il ne laisserait pas prendre la mer à deux béliers blindés qui se construisaient à Liverpool, et ferma ainsi les chantiers et les arsenaux de la Grande Bretagne aux Confédérés. Ceux-ci alors s'adressèrent à la France. Ils firent des traités avec M. Lucien Arman, grand constructeur à Bordeaux et membre du Corps Législatif.

Les Etats-Unis reprochent vivement à ce député d'avoir, dans les discussions au Corps Législatif, engagé

\* Le procès est en ce moment (mai 1868), sur le point d'être plaidé.

le Gouvernement Français à ne pas reconnaître le blocus des côtes du Sud et d'avoir ainsi voulu couvrir ses intérêts personnels du voile de l'intérêt politique et commercial de la France.\*

En effet M. Arman était vers cette même époque devenu le chef d'une association qui s'engageait à vendre au Sud des navires de guerre. Ces navires, disait-on, étaient destinés à établir une ligne régulière de navigation entre Shanghai et San Francisco. Le contrat passé entre M. Arman et le Capitaine Bullock est du 15 Avril 1863. M. Arman s'engage à fournir dans un délai de dix mois deux navires; il est autorisé à confier la construction de deux autres navires à M. Voruz, également membre du Corps Législatif. Le deux premiers navires devaient être armés à Bordeaux; les deux autres à Nantes ou plutôt à St. Nazaire.

M. Erlanger, banquier de M. Bullock, intervient au contrat pour en garantir en partie le paiement.

Les Etats-Unis reprochent encore à M. Arman d'avoir le 1 Juin 1863, écrit une lettre au Ministre de la Marine pour lui demander l'autorisation d'armer ces navires et d'avoir sciemment trompé le Ministre en lui donnant l'assurance que ces navires étaient destinés aux mers de la Chine et du Pacifique, et d'avoir ainsi frauduleusement surpris l'autorisation gouvernementale, qu'il a effet obtenue le 6 Juin 1863. Les Etats-Unis produisent tous les écrits à l'appui de leurs assertions; et toutes les circonstances et toutes les conditions du contrat du 15 Avril 1863 sont parfaitement établies par le texte du traité même et par la présentation des correspondances échangées entre les diverses parties engagées. De plus par une lettre du 12 Juin 1863, M. Arman proposait aux agents du Sud de se charger encore de la confection de six batteries canonnières blindées; il s'engageait aussi à obtenir les autorisations gouvernementales nécessaires pour l'armement de ces navires.

Tous ces faits avaient jusqu'alors échappé à l'attention du Gouvernement Français, quand, en Septembre 1863, M. Bigelow, Consul Américain à Paris, les signala à M. Dayton, Ministre Plénipotentiaire des Etats-Unis en France.

Celui-ci les fit connaître immédiatement au Gouvernement impérial et demanda formellement à M. Drouyn de Lhuys que l'autorisation d'armer les navires accordée à M. Arman par le Ministre de la Marine lui fût retirée.

Ces communications surprirent le Gouvernement Français ainsi qu'il résulte des dépêches de M. Dayton à M. Seward des 11 et 22 Septembre 1863.

Il se fit une échange de correspondances entre le Ministre des Affaires Etrangères et le Ministre de la Marine. Ce dernier déclare “qu'il ne pouvait que s'en rapporter à la déclaration de MM. Arman et Voruz, et ne saurait être responsable des opérations illicites qui pourraient être entreprises.”

Le Gouvernement Français fit une enquête, MM. Arman et consorts nièrent énergiquement les faits dont l'évidence était cependant indiscutable. Et le 22 Octobre 1863, M. Drouyn de Lhuys écrivait à M. Seward que MM. Armand et Voruz, montraient une véritable indignation à l'endroit des charges qui pèsent sur eux.

Quoiqu'il en soit, le Ministre de la Marine notifia à MM. Armand et Voruz qu'il leur retirait l'autorisation

\* Discussion de l'adresse, séance du 12 Février, 1863, Moniteur du 13.

qu'ils avaient obtenu pour armer les quatre navire en construction à Nantes et à Bordeaux.

Le retrait de l'autorisation ne semble pas avoir arrêté MM. Arman et consorts dans leurs opérations ; les Agents des Etats-Unis continuèrent leur étroite surveillance.

M. Arman, en Février 1864, pendant la discussion de l'adresse au Corps Législatif proposa un amendement qui tendait à pousser le Gouvernement Français hors des voies de la neutralité ; mais cet amendement fut retiré par son auteur.

Dans une dépêche de M. Dayton à M. Seward du 14 Février 1864, le Ministre Américain à Paris regrette que cet amendement ait été retiré, car cela eût été une excellente occasion de mettre en lumière toutes les circonstances de l'histoire de la construction des corsaires à Nantes et à Bordeaux.

MM. Arman et consorts pour dégager leur responsabilité paraissent avoir affirmé au Ministre des Affaires Etrangères de France que deux navires cuirassés avaient été vendus au Gouvernement Danois ; M. Drouyn de Lhuys le disait à M. Dayton le 4 Février 1864.

M. Dayton prit des informations à Copenhague. La réponse du Gouvernement Danois fut négative.

En Avril 1864 pareille communication fut faite à M. Dayton par M. Drouyn de Lhuys, avec cette différence que cette fois les mêmes deux navires avaient été vendus à la Suède le 15 Avril 1864 ; le Ministre des Affaires Etrangères de Suède et Norvège démentait le fait dans une dépêche adressée au Ministre des Etats-Unis à Stockholm.

Enfin à la séance du 12 Mai 1864,\* du Corps Législatif, l'orateur du Gouvernement donna les assurances les plus positives que les navires de M. Arman ne sortiraient pas des ports Français, sans qu'il fut bien "démonstré que leur destination n'affecte point les "principes de neutralité que le Gouvernement "Français veut rigoureusement observer à l'égard "des belligérants."

En présence de ces allures si décidées du Gouvernement Impérial les deux navires de Bordeaux, l'Yeddo et l'Osaka, furent définitivement vendus et livrés à la Prusse en Juin et Juillet 1864.

Les deux navires construits à Nantes, le San Francisco et le Shanghai, donnèrent lieu à tout autant de surveillance, de correspondances que ceux de Bordeaux. Par suite des mesures prises par le Gouvernement Impérial les contracteurs nantais furent obligés de les vendre au Gouvernement Péruvien, qui en prit livraison dans les premiers jours de 1865. M. Voruz assure avoir remboursé à M. Bullock toutes les sommes qu'il a reçues du Gouvernement Péruvien pour prix de ces deux navires, et que ces sommes sont égales à celles qu'il avait lui-même touchées des agents du Sud ; seulement un excédant de bénéfice a été partagé entre M. Voruz et M. Bullock.

Restaient encore deux béliers blindés avec éperons que M. Arman s'était engagé à construire par un deuxième contrat du 16 Juillet 1863, par conséquent postérieur au contrat du 15 Avril 1863. Ce sont là les deux navires qui avaient été déclarés comme vendus successivement au Danemarck et à la Suède.

Voici leur histoire telle que la racontent les Etats-Unis :

L'un d'eux s'appelait le Sphinx. Le 31 Mars 1864, un mandataire de M. Arman, M. Arnous-Rivière, signait un contrat de vente du Sphinx avec le Gouvernement Danois. Le navire devait être livré le 10 Juin 1864, mais il ne fut prêt que le 20 Octobre, et le Gouvernement Danois, sur le rapport de ses officiers, et aussi sur le rapport d'un arbitre du tribunal de commerce de Bordeaux, refusa définitivement de devenir acquéreur du Sphinx.

Mais M. Arman, sous prétexte qu'il voulait s'en rapporter à la générosité du Gouvernement Danois pour le prix, obtint l'autorisation d'envoyer le Sphinx à Copenhague. Il le sortit ainsi du port de Bor-

deaux ; le navire fut envoyé à Copenhague sous pavillon Français, et reçut le nom de *Stoer Kodder*.

Mais le Gouvernement Danois ne voulut point acheter (à aucun prix, paraît-il), le navire de M. Arman, et celui-ci dû songer à le ramener en France. Comme le capitaine et l'équipage Français avaient été congédiés à Copenhague à l'arrivée du navire, il fallut le pouvoir d'un équipage Danois, et le même mandataire de M. Arman, M. Arnous-Rivière, obtint la faveur toute exceptionnelle de faire partir le navire sous pavillon Danois, mais seulement pour le voyage de Copenhague jusqu'à Bordeaux, où les papiers de bord devaient être remis au consul Danois.

M. Arnous-Rivière partit alors sur le *Stoer Kodder*, et après plusieurs relâches vint jeter l'ancre dans les eaux Françaises devant la petite île d'Houat, voisine de la presqu'île de Quiberon. Là, le *Stoer Kodder* prit le nom d'Olinde, et devint un navire de guerre pour les Confédérés du Sud. En effet, par les soins de MM. Dubigeon, de Nantes, qui avaient pris part à la construction du Shanghai et du San Francisco, un remorqueur de St. Nazaire, avait apporté du charbon à l'Olinde, puis débarqua la majeure partie de l'équipage Danois à Quiberon, et les officiers à St. Nazaire.

En même temps un vapeur Anglais apportait à l'Olinde son artillerie et ses munitions, ainsi qu'un équipage confédéré. Cet équipage était celui du corsaire la Florida, le commandant était le Capitaine Page. Le bélière changea encore une fois de nom et devint le *Stonewall*, il se rendit en Espagne au Ferrol.

Ces faits s'étaient passés dans les derniers jours de Janvier 1865 ; le Gouvernement Français n'en fut averti que trop tard. Il déclina toute responsabilité, et la rejeta sur le Danemarck, qui avait eu le tort de délivrer, des papiers de navigation à ce navire, qui devait à juste titre lui être suspect.

En Espagne le représentant du Gouvernement des Etats-Unis, voulut en vain faire retenir le *Stonewall*. Le corsaire partit pour Lisbonne, mais les autorités Portugaises l'obligèrent à partir immédiatement. Il était sur veillé par deux frégates Américaines, le Niagara et le Sacramento, qui suivirent le *Stonewall* jusque dans le port de la Havanne, où les autorités Espagnoles le remirent aux agents Américains.

Il y eut, à l'occasion de ces faits, un échange de communications entre M. Drouyn de Lhuys et M. Bigelow ; une lettre écrite par ce dernier le 10 Février 1865, constate que le Ministre de la Justice en France, avait été saisi de la connaissance de ces faits, afin d'y être statué conformément à la loi, s'il y avait lieu. Du reste M. Arnous-Rivière ne niait point ces faits, et dans une lettre publiée dans un journal, il déclarait qu'il était prêt à répondre à la justice, et à lui prouver qu'il n'avait pas violé les lois.

Le Gouvernement Américain ne s'est plus occupé de la poursuite criminelle qu'on lui avait annoncée et ne sait pas ce qu'il en est advenu.

Quant au second bélière blindé que M. Arman construisait en même temps que le *Stonewall* et qui s'appelait le Chéops il fut vendu à la Prusse. Le Gouvernement Français avait pris les mesures les plus sévères pour s'assurer de la sincérité de cette vente, M. Drouyn de Lhuys "was unwilling to be caught again as in the case of the *Stonewall* ;" ainsi que le dit M. Bigelow dans une lettre à M. Seward à la date du 17 Mars 1865.

Tels sont les faits que les Etats-Unis exposent à la justice Française et sur lesquels ils s'appuient pour intenter un procès à MM. Arman, Voruz, Dubigeon, Erlanger, et autres.

L'instance a deux objets, 1° une revendication de propriété ; 2° un règlement de dommages intérêts. Les Etats-Unis réclament d'abord comme leur propriété nationale, l'argent qui a été versé entre les mains de M. Arman et consorts par des individus se-disant agents confédérés, et que les défendeurs détiennent en vertu d'actes illicites et sans titre légitime.

Les Etats-Unis poursuivant en second lieu, conformément à l'article 1382 du Code Napoléon, la réparation du préjudice que leur ont causé les défendeurs

\* Moniteur du 13 Mai 1864.

pendant les années 1863, 1864, et 1865, en violant à leur égard les devoirs de la neutralité, tels qu'ils résultent du droit des gens et des dispositions spéciales des lois de la France.

Pour justifier son action en revendication de l'argent payé à MM. Arman et autres le Gouvernement de Washington prétend que c'est là de l'argent enlevé à la trésorerie des Etats-Unis par des rebelles qui n'ont jamais été reconnus comme un état ; l'autorité fédérale n'a jamais cessé d'exister en droit dans les états insurgés ; la qualité de belligérants reconnue aux Confédérés par la France n'a pu infirmer le droit de l'autorité fédérale ; la France en attribuant aux Confédérés la qualité de belligérants n'a eu pour but et pour effet que de maintenir sa propre neutralité. L'argent versé entre les mains de MM. Arman et autres n'a été fourni qu'en vertu d'un contrat illicite, et doit par conséquent être restitué au légitime propriétaire qui sont les Etats-Unis.

Cette argumentation est appuyée de textes de la Constitution Américaine, du Code Napoléon, d'opinions d'auteurs qui ont écrit sur le droit des gens et défini les cas de violation de la neutralité et les conséquences que ces cas entraînent, et de la citation des traités mentionnés dans l'histoire et relatifs à la neutralité entre les nations et des précédents qui ont signalé les rapports des peuples dans les guerres antérieures.

Enfin les Etats-Unis cherchent à démontrer qu'ils ont toujours observé partout les lois de la neutralité et citent à ce propos les indemnités qu'ils ont accordées à des sujets Anglais en 1794 ; ces sujets Anglais avaient été lésés par des corsaires Français qui, à l'insu du Gouvernement Américain, étaient sortis des ports de l'Amérique où ils avaient été équipés.

Les Etats-Unis citent d'autres cas où ils se sont empressés de faire respecter les droits de la neutralité, en 1853 ils ont fait interrompre la construction des vaisseaux destinés à la Russie même avant que la guerre ne fut commencée, en 1855 ils ont arrêté le Maury sur le simple soupçon d'être équipé en corsaire.

Après avoir ainsi mis en relief les procédés de l'Amérique, les Etats-Unis mettent en évidence les actes reprochés à MM. Arman, Voruz et autres, et prouvent qu'ils sont illicites et contraires au droit des gens et aux lois de la France. Il n'est donc pas douteux que les sommes remises à MM. Arman et autres en vertu de contrats illicites sont *sans cause* dans leurs mains et qu'ils en doivent la restitution à leur légitime propriétaire les Etats-Unis d'autant plus que MM. Arman et consorts n'ont jamais pu ignorer les vices de leur possession, et que d'après les Articles 549 et 550 du Code Napoléon, le possesseur de mauvaise foi ne fait jamais les *fruits siens*, et doit les restituer au propriétaire légitime ; au moyen de ce dernier argument les Etats-Unis réclament à MM. Arman et autres non seulement les sommes elles-mêmes

mais l'intérêt à partir du jour où l'argent a été encaissé en France.

Le deuxième objet de la demande des Etats-Unis contre MM. Arman et consorts est une somme de 2,800,000 francs de dommages intérêts. Cette demande repose sur l'Article 1383 du Code Napoléon, qui dit, "*Tout fait quelconque de l'homme qui cause à autrui un dommage oblige celui par la faute duquel il est arrivé à le réparer.*"

Voici comment les Etats-Unis justifient du préjudice qu'ils ont éprouvé.

MM. Arman et consorts au moyen de leur position officielle dans le monde politique ont fait et laissé croire qu'ils agissaient avec l'assentiment secret du Gouvernement Français et ont ainsi donné des espérances à la Rébellion du Sud qui s'attendait à une intervention Française.

Les armements qui se préparaient en France ont paralysé le commerce Américain à ce point que les armateurs du Nord pour se soustraire aux menaces des corsaires préparés en Angleterre et en France ont fait dénationaliser leurs navires. C'est ainsi que 715 navires Américains sont devenus Anglais pendant la guerre de la sécession.\*

MM. Arman et consorts sont en partie cause des appréhensions du commerce Américain, de la paralysie qui a atteint ses opérations, et lui ont ainsi causé un préjudice réel, dont ils doivent la réparation.

Quant au chiffre même des dommages-intérêts les Etats-Unis assurent que la somme de 2,800,000 francs est très modérée en présence du chiffre des indemnités qu'ils réclament à l'Angleterre.

Tels sont les éléments du procès du Gouvernement de Washington contre les armateurs Français. J'ai puisé ces éléments dans le dossier des avocats des Etats-Unis.

Je n'ai pu connaître encore les défenses que produiront MM. Arman et consorts ; on pense qu'ils déclineront la compétence des tribunaux Français en cette matière qui est toute politique. On dit encore qu'ils prétendront que s'ils ont violé la loi de France c'est le Gouvernement Français seul qui peut leur en demander compte et engager leur responsabilité, mais nullement un Gouvernement étranger.

C'est là tout ce que l'on sait jusqu'à présent sur la défense. En attendant qu'elle se soit fait connaître j'ai pensé qu'il était utile d'exposer les moyens de la demande à cause du conflit existant à ce même sujet entre la Grande Bretagne et l'Amérique.

Cet exposé fait suite à mes notes antérieures que le Foreign Office m'avait demandées je souhaite qu'elle remplisse son atteinte.

Paris, le 3 Déc. 1867. Je, &c.,  
(Signé) TREITT.

\* Lettre de M. Seward à M. Bigelow, le 15 Mars 1865.

#### FRANCE No. V.

Extract from the "Moniteur" of the 5th of April 1868.

INSTITUT IMPÉRIAL DE FRANCE.—ACADÉMIE DES SCIENCES MORALES ET POLITIQUES.

LES NEUTRES pendant la Guerre d'Orient.—Mémoire lu par S. Exc. M. Drouyn de Lhuys dans la séance du 4 Avril 1868.

(Received from His Majesty's Embassy at Paris.)

Les péripéties qui ont amené la guerre d'Orient en 1854 sont présentes à tous les souvenirs. L'ambassade hautaine du prince Mentchikoff à Constantinople et ses exigences impérieuses avaient, en démasquant tout à coup les plans du cabinet de Saint-Petersbourg, rapproché les puissances occidentales dans un sentiment de solidarité devant le péril qui s'annonçait. La France, d'abord particulièrement impliquée dans la discussion qui s'était engagée au sujet des Lieux-Saints n'a pas tardé à reconnaître et à proclamer le caractère Européen du débat, agrandi par les prétentions inattendues de la cour de Russie. L'Angleterre, s'associant à nos vues, s'était placée résolument à nos côtés. L'Autriche, la Prusse, la plupart des Etats de l'Europe,

retrouvaient leur propre cause dans celle de l'équilibre général menacé, et témoignaient leurs sympathies aux défenseurs de l'intérêt commun.

Bientôt la situation dessinée dans l'ombre des négociations diplomatiques se produisit au grand jour. La Russie, poussant plus avant dans la voie où elle était entrée, passait des paroles aux faits et occupait une partie du territoire ottoman. Cette puissance, naguère si entourée de clients et d'amis, se condamnait ainsi elle-même à marcher dans l'isolement, car les alarmes qu'elle suscitait détachaient d'elle les derniers appuis de sa politique. L'Autriche, atteinte dans sa sécurité par les événements dont sa frontière était le théâtre, rassemblait ses troupes et se montrait disposée à soutenir, le cas échéant, ses protestations par les armes. La

modération de la France et de l'Angleterre, qui avaient déterminé le sultan à ne pas considérer comme un acte de guerre l'invasion d'une province de son empire, eût pu encore détourner la catastrophe ; mais la lueur sinistre de l'incendie de la flotte turque, bombardée devant Sinope, fit éclater aux yeux de tous l'inévitable nécessité de la guerre.

Les puissances alliées ne songèrent plus qu'à l'accomplissement des devoirs qui s'imposaient à elles. Unies pour le salut de l'Europe, que le demembrement de la Turquie eût exposée à une crise redoutable, la France et l'Angleterre puisaient dans le sentiment du droit et dans l'intimité d'une alliance honnête une force proportionnée à la grandeur de l'entreprise.

On se rappelle le prodigieux élan de ces jours de résolution énergique et de cordiale confiance. Les gouvernements, animés du même esprit qui entraînait les deux nations l'une vers l'autre, s'attachaient à faire disparaître, au profit de la civilisation et de l'humanité, les traces de divisions séculaires.

Un des objets essentiels sur lesquels devait d'abord se porter leur attention était la conduite qu'en leur qualité de belligérants, ils auraient à observer à l'égard des puissances neutres. Sur ce point, comme sur tant d'autres, des traditions divergentes les séparaient. Cependant l'intérêt de la cause qu'ils avaient prise en mains leur conseillait de se mettre d'accord, dès le début des hostilités, sur cette importante question. En effet, les forces alliées, appelées à opérer ensemble dans des conditions identiques, pourraient-elles obéir à des principes dissemblables sans amener une confusion funeste et une série de conflits ? N'était-il pas à présumer, d'autre part, que les neutres, dont nous devions nous efforcer de conserver le bon vouloir, se verraient avec étonnement, dans une guerre entreprise au nom de l'équité internationale, soumis à des restrictions qui ne découleraient pas d'une règle constante et précise, et qu'ils réagiraient, au détriment de notre œuvre commune, contre les vexations d'une jurisprudence sans uniformité ?

L'histoire des derniers siècles atteste, par une suite de sanglants témoignages, combien la Grande-Bretagne et la France ont compris différemment dans le passé les droits et les devoirs des puissances maritimes en temps de guerre ; le profond dissentiment des deux nations à cet égard s'est manifesté par des luttes continuelles, où rien n'était épargné pour faire prévaloir l'une contre l'autre des législations opposées.

Au moment où allait s'ouvrir la guerre d'Orient, le droit professé par les deux nouvelles alliées, tel qu'il résultait pour chacune d'elles de leurs antécédents historiques, des stipulations fondamentales de leurs lois et de leurs traités avec d'autres Etats, enfin des livres de leurs publicistes les plus autorisés, pouvait se résumer comme il suit :

La France, s'armant du droit reconnu par les usages de la guerre de priver son ennemi d'une portion considérable de ses ressources au moyen de la destruction de son commerce maritime, mais combinant l'exercice de ce droit avec le principe de l'inviolabilité du pavillon des puissances non belligérantes, considérait qu'il lui était permis de saisir, avec les bâtiments ennemis, toutes les marchandises chargées à bord, même celles qui appartiendraient à des neutres. Fidèle, d'autre part, au respect dû aux puissances avec lesquelles elle demeurait en paix, elle s'interdisait de capturer sur leurs navires la propriété même de ses ennemis.

L'Angleterre, ne se préoccupant que d'aller droit à la marchandise de son adversaire pour l'anéantir, et indifférente aux salutaires fictions derrière lesquelles s'abrite l'indépendance des petits Etats, s'arrogeait la faculté de visiter tout bâtiment rencontré en haute mer, et, quel qu'en fût le pavillon, d'y confisquer les biens de l'ennemi. En revanche, elle s'abstenait de toucher à la propriété neutre, même sous pavillon belligérant.

C'était encore une tradition de la Grande-Bretagne que d'interdire aux neutres, pendant la guerre, le commerce que les belligérants réservent en temps de paix à leurs propres sujets, comme c'est le cas dans plusieurs pays pour le cabotage et la navigation

coloniale. Cette prétention, emise d'abord au début de la guerre de Sept-Ans, s'était maintenue dans la doctrine anglaise sous le nom de la règle de 1756.

Enfin, en matière de blocus, les Anglais avaient adopté des pratiques contre lesquelles, au temps de nos grandes guerres, nous avions toujours élevé les protestations les plus vives. Tout en proscrivant en théorie les blocus sur papier, ils avaient fait des blocus par simples croisières une application non moins abusive. Il suffit de rappeler que le blocus continental, cette mesure gigantesque de rétorsion, a été provoqué, au commencement de ce siècle, par les excès dont le gouvernement britannique avait donné l'exemple.

Telles étaient les coutumes diverses qu'il s'agissait de ramener à l'unité. Dès les premiers jours de janvier 1854, le ministre des affaires étrangères de France signalait, dans ses entretiens avec le représentant de la Grande-Bretagne à Paris, l'importance considérable qui s'attachait, selon lui, à une manifestation publique de bon accord entre les deux pays sur des questions d'une conséquence si décisive pour la nature de leurs rapports avec les puissances neutres.

Afin d'atteindre ce but, on devait éviter, disait-il, l'invocation de principes absolus, car l'opposition entre ceux que l'Angleterre maintenait avec une énergie traditionnelle et ceux que nous nous faisons gloire de défendre était tellement radicale, qu'en les dressant les uns en regard des autres, on se condamnait à une contradiction sans issue. Il fallait trouver un terrain sur lequel les alliés, en réservant au besoin leurs théories particulières, pussent se concerter pour une pratique commune. Or, cela n'était possible qu'à une condition, c'est que chacun renonçât, au moins pour la durée de la guerre, à user des facultés que l'un des deux s'estimait permises, mais que proscrivait l'autre. Il est concevable, en effet, que, sans répudier un droit, sans se départir d'une prétention, l'on s'abstienne pour un temps de les faire valoir, tandis qu'on ne saurait, sans inconséquence, exercer, même exceptionnellement, des actes dont on conteste la légitimité. Ce mode de transaction, laissant intactes les doctrines, ne heurtait aucun principe, ne soulevait aucun embarras. Destinée d'ailleurs à être accueillie avec reconnaissance par les puissances non belligérantes, il était conforme aux intérêts comme aux intentions libérales des alliés.

Un tel langage, tout en impliquant de notre part l'abandon de quelques-uns des privilèges que revendiquait notre marine, était cependant en harmonie avec nos traditions nationales, constamment favorables aux droits des neutres et à la liberté des mers. De sérieux motifs de réflexion, tirés de la situation générale du moment, nous encourageaient dans cette voie. L'initiative de la France et de l'Angleterre, marchant au secours d'un allié opprimé, avait l'opinion pour elle dans la plus grande partie de l'Europe, et cette disposition des esprits était un élément de force pour les deux puissances, qui pouvaient espérer en retirer un jour une aide plus effective encore. Une des conséquences heureuses de leur attitude était de leur permettre de déclarer l'alliance ouverte à tous les Etats qui, en vue de l'intérêt général, voudraient y accéder, dans les termes où elles-mêmes l'avaient conclue. Elles devaient donc veiller à ce que rien, dans leur conduite, ne vint blesser des neutralités bienveillantes qu'elles désiraient transformer en concours avoué.

On sait de quel poids pesèrent en effet les puissances neutres dans les négociations relatives à la guerre d'Orient, combien le suffrage approbateur du plus grand nombre, l'adhésion formelle de quelques-unes, contribuèrent à assurer à la France et à l'Angleterre cette position prédominante que consacra définitivement le succès de leurs armes. Les cours allemandes, en particulier, influèrent beaucoup par leurs résolutions sur la marche des événements. Or, au moment où la crise éclatait, l'Allemagne entière était soumise depuis trop longtemps à l'ascendant de notre adversaire, grands et petits Etats étaient rattachés à lui par trop de liens, pour qu'il fût sage, en prévision du rôle réservé à ce pays, de refroidir par l'alarme des intérêts matériels les sentiments qui commençaient à s'y faire jour en notre faveur.

La prudence, qui nous commandait de ménager le commerce allemand, devait nous conseiller de même à l'égard des puissances scandinaves, dont la position géographique rendait, pour les deux parties, l'amitié précieuse, l'hostilité inquiétante. Parmi les traditions qui liaient à la cour de Saint-Petersbourg les cabinets de Stockholm et de Copenhague, le souvenir des neutralités armées de 1780 et de 1800 tenait une place principale. Ces deux grandes manifestations étaient nées sous l'influence de la politique russe. Si nous reproduisions les prétentions qui les avaient provoquées autrefois, n'était-il pas à craindre que nous ne dussions soulever les mêmes résistances et pousser dans les bras de notre ennemi les peuples qui avaient obéi à ses instigations ?

Les Etats-Unis de l'Amérique du Nord étaient pour nous l'objet de préoccupations semblables ; la Russie captait leur faveur, et elle était d'accord avec eux sur l'interprétation des lois de la mer. De tout temps, la grande puissance du Nouveau Monde avait soutenu les droits des pavillons neutres. Fallait-il offrir à nos ennemis l'occasion de la rallier à eux sur ce terrain et de la tourner contre nous ?

L'Angleterre n'était pas insensible à ces considérations, mais elle les combattait en alléguant l'impossibilité où serait son gouvernement d'abandonner, en face du pays, les règles réputées inviolables de son vieux droit maritime.

Cependant le Danemark et la Suède avaient officiellement notifié leur intention de demeurer neutres en cas de conflit. Le ministre des affaires étrangères, écrivant à Londres au sujet de cette communication, en prenait texte pour presser le cabinet britannique de résoudre les questions qu'elle posait.

"Tâchez de connaître à cette occasion," mandait-il le 4 janvier 1854 à notre ambassadeur, "quelles sont les dispositions actuelles du gouvernement anglais en ce qui concerne les neutres. C'est une matière sur laquelle a régné jusqu'ici entre l'Angleterre et nous une grande différence d'opinions. J'ai d'ailleurs sujet de penser, d'après un commencement de polémique que j'ai remarqué dans les journaux anglais, que le commerce serait peu favorable à l'application des anciennes doctrines du gouvernement britannique dans toute leur rigueur. Je vous prie, tout en évitant d'entamer une discussion prématurée sur la question de droit, de recueillir sur ce point des informations aussi exactes que faire se pourra, et de chercher à savoir notamment à quelles obligations le cabinet de Londres croit le Danemark et la Suède tenus envers lui dans l'exercice de la neutralité. Lord Clarendon n'ignore pas sans doute, que la Russie éprouve un vif mécontentement de l'attitude de ces deux puissances, et en particulier de celle de la Suède. C'est une raison de plus pour nous, ce me semble, de croire à la sincérité des résolutions des cabinets de Copenhague et de Stockholm, et de ne pas augmenter, par de trop grandes exigences, les embarras de leur position."

Le 12 janvier, le ministre écrivait encore, en transmettant à Londres une copie de la dépêche qu'il se proposait d'adresser à Stockholm et à Copenhague :

"J'attacherais un grand prix à ce que la réponse de lord Clarendon fût conçue, autant que possible, dans le même sens que la nôtre et pût tranquilliser entièrement la Suède et le Danemark sur l'exercice de leur neutralité. Je sais que le gouvernement anglais n'est pas préparé à se départir de ses anciennes maximes en matière de droit maritime ; mais je désire qu'au moins dans la pratique il mette sa conduite d'accord avec la nôtre, si la guerre vient à éclater. Tout prouve, en effet, que ce sera le meilleur moyen d'accroître les sympathies que nous témoignent les deux cours scandinaves, et à cause de notre bon droit dans la question générale, et à cause des exigences blessantes que le cabinet de Saint-Petersbourg a mises en avant auprès d'elles. La neutralité même est un acte d'indépendance envers la Russie que leurs liens de famille et les événements de ces dernières années rendent très-méritoire, et dont leur puissant voisin ne se dissimule pas le caractère peu bienveillant. C'est donc une attitude que peut les rapprocher plus encore de nous dans cer-

saines éventualités, et qu'il faut ménager avec soin. Trop de rigueur, au contraire, dans la surveillance des relations commerciales que le pavillon marchand de la Suède et du Danemark tâchera d'entretenir avec les ports russes, pourrait refroidir des sentiments qui sont en ce moment tels que nous devons les désirer et amener des discussions d'une nature fâcheuse. Je sais que la Suède compte avec confiance sur la liberté du commerce sous pavillon neutre."

Ce qui touchait particulièrement le gouvernement anglais, c'était la crainte de voir l'Amérique incliner contre nous et prêter à nos ennemis le concours de ses hardis volontaires. La population maritime des Etats-Unis, leur marine entreprenante, pouvaient fournir à la Russie les éléments d'une flotte de corsaires qui, attachés à son service par des lettres de marque, et couvrant les mers comme d'un réseau, harçèleraient et poursuivraient notre commerce jusque dans les parages les plus reculés. Pour prévenir ce danger, le cabinet de Londres tenait beaucoup à se concilier les bonnes dispositions du gouvernement fédéral. Il avait conçu l'idée de lui proposer, en même temps qu'au gouvernement français et à tous les Etats maritimes, la conclusion d'un arrangement ayant pour but la suppression de la course et permettant de traiter comme pirate quiconque, en temps de guerre, serait trouvé muni de lettres de marque.

Ce projet qui fut abandonné dans la suite, témoigne de l'inquiétude éprouvée par les Anglais. Nous pensions comme eux sur la course, pratique barbare qui masquait trop souvent, sous une apparence de dévouement patriotique, la violence excitée par l'appât du lucre. A des époques antérieures, justifiée par l'acharnement des guerres, elle avait pu, du sein de nombreuses iniquités, faire jaillir quelques actions héroïques, transmettre même à l'histoire quelques noms glorieux. Mais nous la considérons comme incompatible désormais avec les usages des nations civilisées, qui ne peuvent souffrir que des particuliers soient armés des droits de la guerre, et qui en réservent les redoutables applications aux pouvoirs publics des Etats constitués. Toutefois, avant de fixer irrévocablement notre opinion sur ce point par des engagements internationaux, nous désirions assurer une consécration semblable à d'autres progrès de la législation des mers. La conduite commune que nous proposons au gouvernement britannique d'observer dans notre lutte contre la Russie, nous paraissait le meilleur acheminement vers cet ensemble de réformes qui, dans notre pensée, étaient corrélatives entre elles.

Si, en fait, dans le système que nous proposons, nous avons moins de concessions à offrir que nous n'en demandions à l'Angleterre, ce n'était pas l'effet d'une prétention arbitraire de notre part, la nature même des choses le voulait ainsi. Pour aboutir à une conciliation entre deux pratiques divergentes, il fallait nécessairement que sur chaque point en discussion, ce fût la plus libérale qui prévalût. Il n'y avait pas là seulement une question d'intérêt ou de convenance, mais une loi logique. L'Angleterre ne pouvait nous demander de nous arroger tout d'un coup, pendant la guerre que nous ferions en commun, des pouvoirs que nous contestions en principe et dont l'exercice à l'égard des tiers était réprouvé par nous depuis des siècles. Eût-elle admis elle-même que nous lui dissions, par exemple : Si vous voulez que nous nous mettions d'accord, il faudra que vous consentiez à saisir, comme nous, les biens neutres sous pavillon ennemi ? A un pareil langage, les hommes d'Etat qui dirigeaient les conseils de la reine Victoria n'eussent pas manqué de répondre : Mais les biens neutres sont, d'après nos théories, inviolables partout et en tout état de cause ; nous l'avons proclamé mille fois ; nous ne saurions aujourd'hui, par amour de la symétrie, usurper un droit dont nous ne reconnaissons pas l'existence.

Au contraire, que les deux nations s'entendissent pour se relâcher de concert de la rigueur de leurs usages particuliers sur les points où l'une d'elles avait adopté une jurisprudence plus favorable aux tiers, et cette règle si simple tranchait toutes les difficultés. La



France et l'Angleterre se rapprochaient, sans se dédire ; leur tolérance n'infligeait aucun blâme à leurs principes, aucun démenti à leurs déclarations antérieures. Une pente naturelle devait donc les amener à se rencontrer dans cette voie, et tout le poids de nos raisonnements résidait dans la force même de la position que, dès le début de la négociation, nous avions reconnue et prise.

L'intimité qui de jour en jour se resserrait plus étroitement entre nos alliés et nous, garantissait d'ailleurs à nos suggestions plus de crédit et nous autorisait à les présenter d'une manière plus pressante. Au moment même où se traitait cette affaire, les deux gouvernements se donnaient un gage mutuel de leur union par les instructions qu'ils adressaient à leurs agents consulaires et diplomatiques, aux gouverneurs de leurs colonies, aux commandants et aux officiers de leurs marines respectives, afin d'étendre indistinctement aux sujets anglais et français, dans toutes les parties du monde, leur protection réciproque. Ainsi, aux yeux des nations étrangères, la France et l'Angleterre confondaient leurs drapeaux. Une telle solidarité rendait plus urgente la nécessité d'une entente complète sur les principes de leur action combinée. D'autre part, l'anxiété des intérêts privés, la pression de l'opinion publique, les besoins impérieux du commerce, exigeaient qu'on mit fin à toute incertitude. Dans les derniers jours de février, des interpellations eurent lieu au parlement britannique. Un des ministres de la Couronne répondit que la reine ferait publiquement connaître ses intentions à l'égard des neutres, avant toute déclaration de guerre. A cette occasion, le ministre français, avec une nouvelle insistance, écrivait à notre ambassadeur, en date du 1<sup>er</sup> mars :

“ Je regretterais vivement que l'Angleterre procédât à une mesure de cette importance sans se concerter préalablement avec nous. Il serait du plus mauvais effet, au début d'une guerre faite en commun, que les deux pays parussent divisés sur des théories, lorsque dans la pratique ils doivent agir ensemble. Veuillez appeler de nouveau l'attention de lord Clarendon sur cet objet. Il me semble que, sans réveiller une controverse qui alarmerait des intérêts que tout nous conseille de ménager avec soin, il serait suffisant de rédiger pour les commandants de nos bâtiments des instructions strictement calculées d'après les nécessités de la guerre actuelle et de nature à rassurer les neutres, particulièrement ceux que les habitudes de leur commerce portent à naviguer de préférence dans la mer Noire ou dans la mer Baltique. De cette façon, l'Angleterre et la France réserveraient chacune leur doctrine, et leur action se confondrait dans une même pratique, que l'on serait toujours maître de rendre plus sévère, pendant le cours des hostilités, si les circonstances venaient à l'exiger.”

A cette dépêche, qui résumait les conversations de ministre des affaires étrangères avec l'ambassadeur anglais à Paris, le gouvernement britannique répondait que les avocats de la Couronne avaient été consultés, qu'on avait débattu à plusieurs reprises la ligne de conduite qu'il convenait d'adopter à l'égard des neutres, qu'avant peu l'on serait en mesure de prendre une décision, mais qu'on ne le ferait certainement pas sans se concerter avec le gouvernement de l'Empereur ; il y avait lieu d'espérer qu'on pourrait admettre quelques principes généraux se rapprochant de ceux que la France avait appliqués de tout temps ; enfin si l'on ne pouvait s'entendre sur une énonciation de principes, on tâcherait au moins de rédiger, pour les commandants des forces navales, des instructions conçues dans les termes indiqués par nous.

Quelques jours après, le 14 mars, lord Cowley communiquait au ministre des affaires étrangères à Paris un projet de déclaration dans laquelle le gouvernement britannique, après avoir réservé la question de droit, s'engageait à borner la visite en haute mer à la vérification de la nationalité du navire et aux mesures requises pour constater s'il n'y avait à bord ni contrebande de guerre, ni correspondances de l'ennemi ; il admettait du reste que le pavillon neutre couvrirait la

marchandise ennemie, tout en laissant intacte sous pavillon ennemi la marchandise neutre ; il manifestait enfin l'intention de ne pas délivrer de lettres de marque, et de traiter comme pirates tous ceux de ses sujets qui en accepteraient.

Ce document, qui avant d'être envoyé à Paris avait subi plusieurs modifications afin d'arriver à une plus grande conformité avec les doctrines françaises, contenait des concessions importantes. La plus essentielle était le respect, tout nouveau de la part de l'Angleterre, de la marchandise ennemie sous pavillon neutre. Eclairé sur le côté politique de la question, le gouvernement britannique avait senti la nécessité de rassurer les puissances neutres, qu'effrayait le souvenir de la violation constante de leur pavillon par ses croiseurs pendant les dernières guerres, et de toutes les vexations qu'avait entraînées l'exercice du droit de visite poussé à outrance. Quand ce droit, en effet, impliquait la recherche de toutes les marchandises auxquelles pouvait être attribuée une provenance ennemie, il revêtait la forme la plus intolérable, et l'emploi qu'en avait fait la Grande-Bretagne était de nature à répandre l'effroi parmi les nations non belligérantes. Restreint aux termes où le cabinet de Londres voulait le maintenir, il pouvait encore, dans la pratique, laisser la porte ouverte à bien des abus de la force, et nous jugions qu'il devait être entouré de garanties plus protectrices pour les neutres.

C'est sur ce point que porta principalement la discussion entre le ministre français et l'ambassadeur d'Angleterre. A la suite de ce débat, qui s'étendit également sur plusieurs articles de détail, la déclaration anglaise, refondue, fut renvoyée à Londres le 20 mars, sous forme d'un projet nouveau que pourrions'approprier pour la circonstance actuelle chacun des deux gouvernements, si le cabinet britannique en venait à partager notre manière de voir.

“ Ce projet,” écrivait le ministre dans la lettre qui en accompagnait l'envoi, “ a été préparé entre lord Cowley et moi dans des entretiens confidentiels sur cette matière délicate. Je viens d'en donner communication à M. le ministre de la marine en le priant de me faire connaître son opinion le plus tôt possible. Nous avons, ce me semble, à opter entre une déclaration commune qui, s'appliquant uniquement à la présente guerre, n'engagerait pas les maximes de l'Angleterre et dans laquelle nous n'abandonnerions pas les nôtres, ou deux déclarations simultanées qui, annonçant les mêmes intentions quant à la conduite et aux instructions données aux commandants des forces navales respectives, réserveraient également la différence de nos doctrines ; mais j'inclinerais pour une seule déclaration, qui serait plus satisfaisante pour les neutres, et qui, en constatant mieux notre parfait accord, frapperait plus fortement les esprits.”

Le 24 mars, le ministre des affaires étrangères écrivait encore en ces termes au comte Walewski, notre ambassadeur à Londres :

“ Les observations que lord Cowley m'a présentées sur le projet de déclaration relatif à la neutralité, que j'ai eu l'honneur de vous adresser le 20 de ce mois, donnent lieu, de notre part, à certaines remarques sur lesquelles je crois utile d'appeler votre attention.

“ Pour parvenir à faire une déclaration commune, on devait se borner à formuler ce que les deux nations entendaient admettre ou repousser pendant la durée de la guerre actuelle. Les théories de la France et de l'Angleterre étant différentes, il était indispensable d'éviter tout ce qui pouvait ressembler à une sorte de déclaration de principes. Le projet que je vous ai communiqué était une transaction entre les systèmes des deux pays ; il ne faisait prévaloir ni l'une ni l'autre de ces doctrines.

“ Si le gouvernement anglais désire que sa déclaration indique “ qu'il réserve l'application de tel ou tel principe,” ou “ qu'il renonce, quant à présent, à l'exercice de tel ou tel droit,” en indiquant ainsi qu'il considère ce principe comme reconnu, et ce droit comme lui appartenant, il faudra nécessairement en venir à faire deux déclarations, semblables quant au

fond, mais différentes quant à la forme : car, évidemment, le Gouvernement français ne peut dire "qu'il renonce à l'exercice d'un droit" dont il a toujours contesté l'existence, ou "qu'il réserve l'application d'un principe," quand il a sans cesse refusé de le reconnaître. Ceci, du reste, n'est qu'une simple question de forme ; ce qui importe le plus en réalité, c'est que les deux gouvernements soient d'accord quant aux règles pratiques qui devront être appliquées.

"Je passe à l'examen de deux points importants, et sur lesquels je vous invite à appeler plus spécialement l'attention de lord Clarendon.

"Le premier est relatif aux marchandises neutres saisies à bord de navires ennemis. Le projet je vous ai envoyé déclarait que la confiscation n'en serait pas prononcée ; c'est là une question très-grave en elle-même, très-délicate surtout pour le Gouvernement français. Il est à craindre, en effet, que les marchandises ennemies chargées à bord de navires ennemis n'arrivent à naviguer sans danger, au moyen de neutralisations simulées ; et, d'autre part, les lois françaises prononçant la confiscation des navires ennemis sans admettre d'exception pour les marchandises neutres, il faudra peut-être une loi nouvelle pour enlever aux marins, qui ont des droits à exercer, cette part souvent très-considérable de leurs prises. C'est une question, du reste, au sujet de laquelle j'aurai à m'entendre, comme sur toutes les autres, avec M. le ministre de la marine. Mais je ne puis le consulter utilement sur ces divers points que lorsque j'aurai été officiellement et complètement informé des propositions définitives du cabinet britannique.

"Le gouvernement anglais paraît insister pour que le projet de déclaration défende aux neutres de se livrer, pendant la guerre, soit au commerce colonial, soit au cabotage, s'ils sont réservés pendant la paix.

"Je n'ai pas besoin de vous rappeler avec quelle persistance le Gouvernement français, à toutes les époques, a soutenu les réclamations nombreuses et vives que l'adoption de cette règle souleva, dès l'origine, de la part des nations neutres. La France est donc liée par ses précédents historiques ; elle l'est également par des traités faites avec plusieurs Etats, dont elle s'est engagée à laisser les navires naviguer librement en temps de guerre, même entre deux ports ennemis. Comment pourrions-nous aujourd'hui nous associer à une disposition qui refuserait aux neutres un droit que nous avons toujours revendiqué pour eux, et que nous avons même proclamé solennellement dans nos traités ?

"Je n'indique qu'en passant l'intérêt particulier que cette question présente pour la France, et les conséquences différentes que l'adoption de la règle proposée aurait pour les deux pays. L'Angleterre, qui admet en tout temps les pavillons étrangers à prendre part au cabotage et au commerce des colonies, n'a rien à craindre de l'application qui pourrait lui en être faite ; la France, au contraire, qui réserve encore ces navigations au pavillon national, pourrait avoir éventuellement à souffrir de la règle qu'on l'invite à proclamer.

"Je me demande, du reste, s'il y a un intérêt considérable, pour la guerre actuelle, à insérer dans la déclaration une disposition semblable. La Russie, il est vrai, réserve en temps de paix le cabotage et le commerce des colonies ; mais, dans la Baltique, le cabotage ne se fait qu'entre un petit nombre de ports, qu'il sera facile aux flottes de fermer complètement au moyen d'un blocus effectif. Il en est de même de la mer Noire, sur laquelle les flottes combinées dominent. Quant au commerce de l'Amérique russe, qui est le monopole d'une compagnie, s'il vient à être exercé par les vaisseaux des Etats-Unis, il en pourrait résulter, dans un intérêt minime, des complications graves que la France a d'autant plus le désir d'éviter sur cette question, que son traité de 1778 avec les Etats-Unis est un de ceux où le droit des neutres de se livrer, pendant la guerre, aux commerces réservés a été formellement stipulé.

"Je me plais à reconnaître, du reste, tous les efforts que le gouvernement anglais a fait pour se rapprocher

autant que possible des doctrines de la France, et vous pouvez assurer de nouveau lord Clarendon de notre désir sincère d'entrer dans la voie des transactions mutuelles. Nous en avons donné la preuve sur la question des marchandises neutres à bord des navires ennemis. Mais, en ce qui concerne le droit des neutres de se livrer aux navigations réservées, lord Clarendon reconnaîtra, j'en suis certain, que la concession ne saurait venir de notre part. Le gouvernement anglais, en effet, qui regarde la prohibition comme fondée sur le droit des gens, peut bien renoncer à s'en prévaloir, tout en réservant son système, tandis que la France ne saurait proclamer une règle que, d'après ses principes, elle ne se croit pas autorisée à appliquer.

"Telles sont les observations que je vous prie de présenter à lord Clarendon. J'espère qu'elles le détermineront à écarter de la déclaration anglaise une règle que la France ne pourrait faire figurer dans la sienne. Jusqu'ici les deux gouvernements ont saisi toutes les occasions de faire ressortir la solidarité complète qui unit si heureusement les deux nations ; il importe que cette même pensée continue de se révéler jusque dans les règles à établir pour les questions secondaires. Si, sur certains points, les deux pays ne peuvent adopter les mêmes principes, il me paraît du moins très-désirable qu'ils évitent, surtout dans une déclaration solennelle, d'en proclamer de différents.

"Vous voudrez bien me faire connaître le plus tôt qu'il vous sera possible le résultat de l'entretien que vous aurez eu avec lord Clarendon."

Les points délicats touchés dans cette dépêche faisaient beaucoup hésiter l'Angleterre. Cependant les événements marchaient, le temps pressait. Le 26 mars, le ministre des affaires étrangères signalait, dans une dépêche télégraphique, la nécessité d'une prompt solution. "Insistez," mandait-il à M. le comte Walewski, "sur les très-graves inconvénients d'une déclaration séparée qui ferait douter de l'entente des deux pays, alarmerait les neutres, et amènerait d'involontaires et inévitables conflits entre les commandants. Si lord Clarendon accepte le principe d'une déclaration commune, sauf à régler le détail par des instructions séparées, priez-le de me faire communiquer son projet, pour que je puisse m'entendre avec le ministre de la marine et arriver à une conclusion."

Reprenant sa pensée dès le lendemain pour la développer, voici ce qu'écrivait le ministre en date du 27 :

"Mes entretiens avec lord Cowley ont été consacrés, depuis quelque temps, à l'examen de l'importante et délicate question des droits des neutres. Lord Clarendon a dû être informé presque journellement de l'objet de ces discussions, et je sais que M. l'ambassadeur d'Angleterre lui a déjà transmis le projet de déclaration dont nous avons posé les bases ensemble. Ce ministre se trouvait ainsi tout préparé à recevoir la communication que je vous chargeais de lui faire par ma dépêche du 24 de ce mois et dont le but était de l'amener à émettre une opinion définitive sur des points qu'il a eu le temps d'examiner. Ma dépêche télégraphique d'hier vous aura prouvé l'intérêt que le Gouvernement de l'Empereur attache à sortir d'une indécision qui, aujourd'hui que l'état de guerre est proclamé, ne saurait se prolonger sans les plus graves inconvénients. J'espère que vos efforts auront déterminé le principal secrétaire d'Etat de Sa Majesté Britannique à renoncer au système pour lequel il avait laissé percer ses préférences et qui consisterait dans la publication de deux déclarations non-seulement séparées, mais distinctes quant aux principes qui y seraient émis ou réservés. Ce n'est qu'avec le plus vif regret que nous verrions l'Angleterre adopter une marche qui, dès le principe même d'une guerre faite en commun, accrédirait l'opinion d'une divergence entre les deux gouvernements et affaiblirait, aux yeux de nos adversaires, l'effet politique de l'union intime et complète qui a donné à notre diplomatie la force qu'il est maintenant plus nécessaire que jamais de conserver pour nos actes.

"Si de l'ensemble nous descendons aux détails, les dangers ne sont pas moins grands. Entre la déclara-

tion de la France et celle de l'Angleterre, les neutres feront un choix, et nul doute qu'ils ne se rangent plus volontiers autour de la puissance qui, par sa fidélité à des traditions auxquelles ils sont inviolablement attachés, leur apparaîtra comme le champion de leur propre cause. Ne serait-il pas préférable de leur montrer leur sûreté dans l'union des deux marines et d'éviter avec soin de raviver une vieille querelle, qui alarmerait leurs intérêts, exciterait leurs passions, et les reporterait peut-être moralement dans un autre camp que le nôtre ?

"D'un autre côté, et ce n'est pas une des moindres objections à faire au système indiqué par lord Clarendon, comment concevoir qu'en présence de deux déclarations distinctes établissant une séparation théorique entre les gouvernements, leurs amiraux et, leurs officiers de mer s'entendent dans la pratique ? Il surgira entre eux, je ne veux pas dire des conflits, mais des divergences involontaires et inévitables qui nuiront au succès de leurs opérations.

"Les Etats-Unis enfin sont prêts, je ne saurais en douter, à revendiquer le rôle que nous déclinions et à se faire les protecteurs des neutres, qui eux-mêmes recherchent leur appui. Le cabinet de Washington nous propose en ce moment de signer un traité d'amitié, de navigation et de commerce où il a inséré une série d'articles destinés à affirmer avec une autorité nouvelle les principes qu'il a toujours soutenus et qui ne diffèrent pas des nôtres. Le principal secrétaire d'Etat de Sa Majesté Britannique comprendra que nous n'aurions aucun moyen de ne pas répondre favorablement à l'ouverture qui nous est faite, si la France et l'Angleterre, bien que se trouvant engagées dans une même entreprise, affichaient publiquement des doctrines opposées. Que les deux gouvernements, au contraire, s'entendent sur les termes d'une déclaration commune, et nous pourrions alors ajourner l'examen des propositions des Etats-Unis. Il me paraît difficile que ces considérations ne frappent pas l'esprit de lord Clarendon, et j'espère qu'il se décidera à accepter un projet qui, se bornant à tenir compte des conditions de la guerre actuelle, laissera de côté des principes qu'il est d'autant moins opportun de soulever ou de rappeler que leur application serait inutile, et dont les effets, comme dans la question du cabotage sur les côtes des pays ennemis, par exemple, peuvent être remplacés par l'emploi de mesures pratiques au sujet desquelles tout le monde est d'accord. Les instructions données aux commandants des bâtiments de guerre des deux pays suppléeraient naturellement à ce qu'il y aurait d'incomplet dans la déclaration identique ; il serait toutefois nécessaire, même dans le cas où ces instructions devraient conserver quelques traces des doctrines particulières de la France et de l'Angleterre, qu'elles fussent concertées en commun, et vous donnerez à lord Clarendon l'assurance que M. le ministre de la marine emploierait tous ses soins à se rapprocher autant que possible de l'amirauté britannique dans les directions qu'il transmettrait à nos amiraux."

Le même jour, le ministre adressait à Londres un nouveau projet de déclaration, précédé d'un court préambule, et où il s'était efforcé de se rapprocher le plus possible, pour la forme comme pour le fond, des idées exprimées par l'Angleterre.

"Cette déclaration," écrivait-il, "que j'ai concertée définitivement avec M. le ministre de la marine, ne consacre que les principes essentiels sur lesquels il importe de constater l'accord des deux gouvernements ; des instructions séparées, qui pourront d'ailleurs être réciproquement communiquées, régleront l'application de ces principes suivant la législation de chacun des deux pays et résoudront, sous ce point de vue spécial, les difficultés sur lesquelles la divergence des doctrines respectives ne permet pas un accord patent, du moins immédiat."

Cet envoi se croisa en route avec un contre-projet dans lequel les Anglais, malgré nos observations, maintenaient l'interdiction du commerce neutre "in transitu" entre deux ports appartenant à l'ennemi," et lord Cowley, le 28 mars, faisait savoir que cette

rédaction était définitivement adoptée par le conseil de Sa Majesté Britannique.

Elle était inacceptable pour nous. Le jour même le ministre des affaires étrangères constatait dans ces termes l'impossibilité de s'entendre : "Je regrette," écrivait-il à Londres, "qu'en rappelant dans cet acte des théories qui ne sont pas les nôtres, et en y insérant l'interdiction du commerce de cabotage, ainsi que le principe de la limitation du commerce des neutres au seul commerce permis en temps de paix, le gouvernement britannique nous place dans la nécessité de faire une déclaration séparée. Cette déclaration comprendra tous les points indiqués dans le projet joint à ma dépêche d'hier, sauf le préambule, dont j'ai fait l'objet d'un rapport à l'Empereur. J'ai obtenu, ainsi que vous le verrez, l'assentiment de M. le ministre de la marine à la règle qui exempte de la saisie la marchandise neutre à bord d'un navire ennemi.

"Lord Cowley m'a communiqué en même temps le projet des instructions destinées aux commandants des bâtiments de guerre anglais, en m'annonçant qu'il était sur le point d'être signé. Dès lors il est superflu de relever les questions qu'il tend à résoudre dans un sens opposé à nos principes et à notre législation. Il ne nous reste qu'à rédiger, à notre point de vue, les instructions destinées à nos propres croiseurs. Je viens de prier M. le ministre de la marine de préparer ce travail, que j'aurai soin de vous communiquer pour être porté à la connaissance du gouvernement britannique. J'ai l'espoir que, dans l'exécution, cette divergence des instructions n'entraînera pas d'inconvénients graves, car nous sommes d'accord sur les points les plus essentiels, et je reconnais particulièrement l'esprit de libéralité avec lequel le gouvernement anglais s'est rapproché de nos principes en matière de blocus. Cependant, si quelque dissentiment se présentait, je n'aurais qu'à regretter d'autant plus les retards qu'ont éprouvés la préparation et la communication des projets sur lesquels une entente préalable aurait été si désirable."

C'était un vif désappointement pour les deux gouvernements que de voir échouer leur entente par suite d'une dissidence d'un intérêt médiocre pour la conduite de la guerre actuelle. Mais la France était liée par des engagements positifs avec d'autres puissances, et il lui était juridiquement impossible, quand même elle eût été moralement libre, de se départir de la position où elle s'était retranchée. Dans les matières où sa latitude d'action n'était pas restreinte à l'avance, elle avait témoigné de son empressement à aller au-devant de son alliée en élargissant sa législation ancienne. Ainsi tous les projets envoyés à Londres prononçaient l'abolition de la course, et, abandonnant les usages séculaires de notre marine, nous venions de consacrer définitivement l'immunité de la propriété neutre sous pavillon ennemi. Nous avions donné la pleine mesure de nos dispositions conciliantes ; il ne nous était plus permis de la dépasser.

Bien que les déterminations notifiées par l'ambassadeur d'Angleterre parussent irrévocables, le cabinet britannique se rendait bien compte des embarras de la situation. Il était très-sensible aux inconvénients que devait avoir la promulgation simultanée de deux règles différentes, destinées à être parallèlement appliquées aux nations neutres. Au dernier moment, le conseil fut assemblé de nouveau. Après une longue discussion, il fut décidé que l'article qui avait provoqué nos objections serait rayé de la déclaration anglaise.

Dès lors l'entente était complète. Pour arriver à une identité absolue, il nous était facile de plier notre projet aux formes traditionnelles que doivent revêtir les ordres en conseil émis au nom de la reine du Royaume Uni. En quelques heures, grâce au télégraphe, les deux cabinets purent constater leur accord et aviser à la publication immédiate de leur déclaration commune. Le texte français, précédé d'un rapport à l'Empereur, parut au *Moniteur* du 30 mars 1854, avec la date du jour précédent. On voit qu'il n'y avait pas eu de temps de perdu. Voici les deux pièces :



## RAPPORT À L'EMPEREUR.

Paris, 29 mars 1854.

"SIRE,  
"A UNE époque où les relations maritimes et les intérêts commerciaux occupent une si large place dans l'existence des peuples, il est du devoir d'une nation qui se trouve contrainte à faire la guerre de prendre les mesures nécessaires pour en adoucir autant que possible les effets, en laissant au commerce des peuples neutres toutes les facilités compatibles avec cet état d'hostilité auquel ils cherchent à demeurer étrangers.

"Mais il ne suffit pas que les belligérants aient la pensée intime de respecter toujours les droits des neutres ; ils doivent de plus s'efforcer de calmer par avance ces inquiétudes que le commerce est toujours si prompt à concevoir, en ne laissant planer aucun doute sur les principes qu'ils entendent appliquer.

"Un règlement sur les devoirs des neutres pourrait paraître une sorte d'atteinte à la souveraineté des peuples qui veulent garder la neutralité ; une déclaration spontanée des principes auxquels un belligérant promet de conformer sa conduite semble, au contraire, le témoignage le plus formel qu'il puisse donner de son respect pour les droits des autres nations.

"C'est dans cette pensée qu'après m'être concerté avec le gouvernement de Sa Majesté britannique, j'ai l'honneur de soumettre à la haute approbation de Votre Majesté la déclaration suivante.

"Je suis avec respect, Sire,

"de Votre Majesté le très-humble

"et très obéissant serviteur et fidèle sujet,

"DROUYN DE LUY.

"Approuvé :

"NAPOLÉON."

*Déclaration relative aux neutres, aux lettres de marque, etc.*

"S. M. l'Empereur des Français, ayant été forcé de prendre les armes pour soutenir un allié, désire rendre la guerre aussi peu onéreuse que possible aux puissances avec lesquelles Elle demeure en paix.

"Afin de garantir le commerce des neutres de toute entrave inutile, Sa Majesté consent, pour le présent, à renoncer à une partie des droits qui lui appartiennent, comme puissance belligérante, en vertu du droit des gens.

"Il est impossible à Sa Majesté de renoncer à l'exercice de son droit de saisir les articles de contrebande de guerre et d'empêcher les neutres de transporter les dépêches de l'ennemi. Elle doit aussi maintenir intact son droit, comme puissance belligérante, d'empêcher les neutres de violer tout blocus effectif qui serait mis, à l'aide d'une force suffisante, devant les forts, les rades ou côtes de l'ennemi.

"Mais les vaisseaux de Sa Majesté ne saisiront pas la propriété de l'ennemi chargée à bord d'un bâtiment neutre, à moins que cette propriété ne soit contrebande de guerre.

"Sa Majesté ne compte pas revendiquer le droit de confisquer la propriété des neutres, autre que la contrebande de guerre, trouvée à bord des bâtiments ennemis.

"Sa Majesté déclare en outre que, mue par le désir de diminuer autant que possible les maux de la guerre et d'en restreindre les opérations aux forces régulièrement organisées de l'Etat, elle n'a pas, pour le moment, l'intention de délivrer des lettres de marque pour autoriser les armements en course."

Le jour où, des deux côtés de la Manche, cette déclaration fut rendue publique, le ministre des affaires étrangères écrivait à Londres : "Je me félicite vivement de la preuve éclatante que la France et l'Angleterre viennent de donner de leur bon accord dans la question si importante des droits réservés aux neutres pendant la guerre actuelle. L'harmonie qui s'est établie entre les deux cabinets sur un point où l'on aurait pu croire qu'il leur serait, malgré leur sincère envie d'y parvenir, extrêmement difficile de s'entendre, produira partout la meilleure impression et conciera aux puissances auxquelles appartient l'initiative de cette généreuse résolution les sympathies des nations commerçantes dans le monde entier.

Veuillez dire à lord Clarendon que le Gouvernement de l'Empereur apprécie comme il le doit l'esprit qui a présidé aux délibérations du gouvernement de la reine Victoria sur un sujet qui lui tenait particulièrement à cœur, et qu'il en considère le règlement, dans les termes où il s'est fait, comme un des meilleurs résultats de l'intime alliance des deux pays."

La confiance exprimée dans cette lettre ne fut pas déçue. L'accord si nouveau de la France et d'Angleterre sur les règles de droit maritime fut salué avec joie par les neutres, comme l'aurore d'un jour de justice et de réparation. Placés à l'abri des violences de la guerre, ils n'avaient plus à craindre d'être entraînés dans la querelle d'autrui, et ils demeuraient libres de poursuivre en paix, au milieu de combats auxquels ils étaient étrangers, leur commerce accoutumé, pourvu qu'aucune fraude n'appelât sur eux la sévérité des belligérants.

Les alliés, en notifiant aux divers gouvernements les dispositions qu'ils avaient adoptées, rappelèrent que le strict accomplissement des devoirs de la neutralité était la condition et la garantie du maintien des avantages que ces dispositions conféraient aux neutres. Tel était l'objet de la circulaire suivante, qui fut adressée par le ministre des affaires étrangères à tous les agents de son département accrédités auprès des puissances non engagées dans la lutte. Elle porte la date du 30 mars :

"Monsieur, le *Moniteur* de ce jour publie la déclaration du Gouvernement français au sujet des neutres, ainsi que le rapport que j'ai présenté à l'Empereur en la soumettant à sa haute approbation. Vous trouverez ci-joint copie de ces deux documents.

"Le gouvernement britannique a promulgué, de son côté, la même déclaration.

"Au moment où les deux Etats prennent les armes pour la défense commune d'un allié, ils ne pouvaient donner une preuve plus éclatante de la parfaite conformité de leurs sentiments et de l'esprit de solidarité qui les unit, qu'en adoptant les mêmes résolutions dans une matière sur laquelle jusqu'ici leurs principes avaient été si différents.

"Pénétré de cette sollicitude que la France a toujours témoignée pour les neutres, le Gouvernement de l'Empereur s'était dès longtemps préoccupé des questions graves que la neutralité soulève, pour en préparer la solution dans le sens le plus favorable aux intérêts des peuples avec lesquels il demeure en paix. Je m'empresse de reconnaître qu'il a trouvé le gouvernement britannique animé des mêmes désirs, et déjà pénétré de la pensée de laisser les neutres en possession de tous les avantages que les nécessités indispensables de la guerre ne feraient point un devoir absolu de restreindre.

"C'est cette communauté de vues qui a dicté la déclaration adoptée par les deux gouvernements ; et, je n'hésite pas à le dire, jamais un document de cette nature n'a été conçu dans des termes aussi favorables.

"L'intention de ne point délivrer de lettres de marque y est officiellement annoncée ;

"La nécessité du blocus effectif est admise ;

"Le pavillon neutre couvrira la marchandise, et pourtant la marchandise neutre restera libre sous pavillon ennemi :

"Tels sont les avantages qui vont être assurés au commerce pendant la guerre ; et même lorsqu'elle sera terminée, cette déclaration commune demeurera comme un précédent considérable acquis à l'histoire de la neutralité.

"Mais, si l'union intime de la France et de l'Angleterre a permis de consacrer un système aussi avantageux pour les nations neutres, il doit en résulter pour celles-ci une obligation plus stricte de respecter d'une manière complète les droits des belligérants. Nous avons donc raison d'espérer que les gouvernements neutres non seulement ne feront aucun acte qui puisse présenter un caractère hostile, mais qu'ils s'empresseront de prendre toutes les mesures nécessaires pour que leurs sujets s'abstiennent de toute entreprise contraire aux devoirs d'une rigoureuse neutralité.

"Je vous adresserai incessamment un projet de note, dont la rédaction aura été concertée avec le gouverne-

ment de Sa Majesté Britannique, pour notifier la déclaration présente au gouvernement auprès duquel vous êtes accrédité."

Quelques jours plus tard, les pièces qui suivent furent adressées aux mêmes agents.

"Paris, le 5 avril 1854.

"Monsieur, j'ai l'honneur de vous transmettre le projet d'une note que vous voudrez bien adresser immédiatement au gouvernement auprès duquel vous êtes accrédité, pour lui faire connaître les principes que la France et la Grande-Bretagne appliqueront aux neutres dans le cours de la guerre actuelle, ainsi que la résolution qu'ont prise les deux gouvernements de ne point délivrer quant à présent de lettres de marque.

"Le représentant de Sa Majesté Britannique recevra l'ordre d'adresser au gouvernement de . . . une communication analogue.

"Vous voudrez bien me transmettre la réponse du gouvernement de . . . dès qu'elle vous sera parvenue, et faire les démarches nécessaires pour qu'elle soit conforme à la juste attente des deux gouvernements."

#### *Projet de note.*

"Le soussigné a reçu l'ordre de son gouvernement d'adresser à S. Exc. M. . . . la communication suivante :

"S. M. l'Empereur des Français et S. M. la reine du Royaume-Uni de la Grande-Bretagne vont se trouver dans la nécessité de recourir à la force des armes pour repousser les agressions dont l'empire ottoman est l'objet de la part du gouvernement de S. M. l'empereur de Russie. Voulant, autant que possible, diminuer pour le commerce les conséquences funestes de l'état de guerre, Leurs Majestés ont résolu de ne point autoriser la course, quant à présent, par la délivrance de lettres de marque, et de faire connaître, en même temps que cette résolution, les principes qu'elles entendent appliquer à la navigation et au commerce des neutres dans le cours de cette guerre. C'est dans ce but que Sa Majesté l'Empereur des Français a fait publier la déclaration ci-jointe, identique à celle que S. M. la reine du Royaume-Uni de la Grande-Bretagne et d'Irlande a fait publier de son côté.

"En restreignant l'exercice de leurs droits de bel-ligérants dans des limites aussi étroites, les gouvernements alliés se croient fondés à compter sur les efforts sincères des gouvernements qui demeureront neutres dans cette guerre, pour faire observer par leurs sujets ou nationaux les obligations de la neutralité la plus absolue. En conséquence, le Gouvernement de S. M. l'Empereur des Français a la confiance que le gouvernement de . . . accueillera avec satisfaction l'annonce des résolutions prises en commun entre les deux gouvernements alliés, et voudra bien, par une juste réciprocité, donner des ordres pour qu'aucun corsaire sous pavillon russe ne puisse être armé, ni ravitaillé, ni admis avec ses prises dans les ports de . . . et pour que les sujets (ou citoyens) . . . s'abstiennent rigoureusement de prendre part à des armements de ce genre ou à toute autre mesure contraire aux devoirs d'une stricte neutralité."

Ainsi, jusque dans les détails de la notification qu'elles firent de concert, la France et l'Angleterre eurent à cœur de manifester par un langage identique leur parfait accord. Cette union intime ne se démentit pas pendant la suite des événements. Si, dans l'application des règles posées en commun, quelques divergences se firent jour encore sur des points secondaires, elles furent facilement aplanies ou demeurèrent sans conséquence. Malgré l'entente générale sur les principes, des opinions ou des habitudes particulières pouvaient, à certains égards, marquer la trace de pratiques si longtemps opposées. Des instructions furent envoyées par les deux gouvernements aux commandants de leurs marines respectives afin d'atténuer les différences qui subsistaient et qui firent d'ailleurs le sujet

d'un complément d'explications amicales échangées entre les cabinets de Paris et de Londres.

Les neutres profitèrent largement de toutes les facilités qui leur étaient accordées. Ils n'en abusèrent point, et pendant toute la durée de la guerre la France et l'Angleterre n'eurent pas à regretter leur généreuse initiative. Cette expérience, comme on devait s'y attendre, fut concluante. Le progrès des mœurs secondant la réforme des doctrines, les nouvelles règles éprouvées par la pratique des deux grandes puissances maritimes furent universellement acceptées comme un bien pour toutes les nations.

En Angleterre comme en France, les classes commerciales, loin de voir avec jalousie la sécurité que ce régime libéral donnait à des intérêts rivaux, se félicitaient du développement général des transactions qui en était la conséquence et sentaient que tous étaient appelés à y trouver également leur avantage. L'exposition universelle de 1855, organisée à Paris pendant que nos armées de terre et de mer combattaient en Crimée et dans la Baltique, fournit, on s'en souvient, une preuve éclatante de la vigueur et du succès avec lesquels les travaux de la paix étaient poursuivis au sein même d'une guerre acharnée. Un tel spectacle était une gloire pour le siècle où il se produisait pour la première fois, et il devait inspirer une juste confiance dans l'avenir des idées dont il signalait le triomphe. De plus en plus, les cruelles nécessités de la guerre étaient circonscrites dans un cercle étroitement tracé, en dehors duquel l'humanité pacifique et industrielle gardait ses droits.

Le système inauguré pour la guerre de 1854 répondait si bien à des besoins communs à tous les peuples, qu'il prit sans difficulté le caractère d'une réforme définitive du droit international. Au congrès de paix réuni à Paris en 1856, les plénipotentiaires qui eurent pour mission de consacrer les résultats de la guerre se trouvèrent naturellement amenés à y comprendre la confirmation des règles qui avaient été observées par les puissances belligérantes à l'égard des neutres. Ce fut l'objet de la déclaration de Paris du 16 avril 1856, conçue en ces termes :

- 1° La course est et demeure abolie.
- 2° Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre.
- 3° La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi.
- 4° Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral ennemi.

A cette déclaration ont accédé toutes les puissances, excepté l'Espagne, le Mexique et les Etats-Unis de l'Amérique du Nord. Les deux premières ne firent des réserves que sur le droit d'armer des corsaires, mais elles donnèrent leur adhésion aux autres articles. Quant aux Etats-Unis, ils auraient accepté la déclaration tout entière, si l'on y eût ajouté une clause relative à l'inviolabilité de la propriété privée sur mer.

Sauf ces restrictions, les arrangements conclus en 1854 entre l'Angleterre et la France sont tombés dans le domaine public, et placés désormais sous l'autorité du droit des gens.

Ce résultat était facile à prévoir. A l'ouverture de la guerre, dans le cours des négociations avec le cabinet de Londres, nous insistions, afin de désarmer sa résistance et de lever ses scrupules, sur le caractère temporaire des concessions que nous lui demandions ; mais dans notre pensée ce régime, en apparence transitoire, était destiné à se perpétuer par la force des choses et d'un consentement unanime. En effet, lorsque des intérêts considérables se sont développés, pendant un certain temps, sous l'abri d'un système plus libéral, ils deviennent, à leur tour, les fermes appuis et les invincibles défenseurs du régime qui les a d'abord protégés.

DROUTN DE LHUTS.

## ITALY.

MY LORD, Florence, March 2, 1867.

With reference to your Lordship's despatch marked Circular of February 14, directing me to obtain official information respecting the Neutrality Laws of Italy, I have the honour to transmit herewith to your Lordship copies, accompanied by translations, of the laws in force upon this subject, as well as the Code of Regulations for the Italian Mercantile Marine, containing certain rules to be observed by the Superintendent of Harbours respecting the sojourn in them of belligerent vessels of war, which have been transmitted to me by the Italian Minister for Foreign Affairs.

I have, &c.,  
HENRY ELLIOT.

## CIRCULAR OF THE MINISTER OF MARINE.

Turin, April 6, 1864.

IN transmitting to Your Excellency the Royal Decree of to-day's date on the neutrality of the ports of the kingdom, the undersigned thinks it opportune to accompany it with the present circular, which is intended to serve as a rule for the practical application of the regulations contained in the same.

The report to His Majesty, which precedes the Decree itself, will make known to Your Excellency the fundamental principles of the international maritime law on which it is founded as also the general rules which guide it.

Such rules and such principles, having been recognized by the publicists of all nations and of all epochs, are moreover, borne evidence to by recent and analogous regulations which have emanated from the principal maritime powers during the last few years.

The state of neutrality which the Government of the King intend to observe with respect to Powers which find themselves in declared hostility to each other, imposes certain obligations on the belligerent parties, obligations which cannot be separated from the analogous rights which accompany them; and, therefore, in declaring the duties imposed by the most strict neutrality, it is necessary to mention, at the same time, the prerogatives which arise from such conditions. Thus, in forbidding Italian subjects from taking part in any way whatsoever to the advantage or disadvantage of the belligerent States; in preventing that in places on the sea shore any commercial operations should be carried out which could produce harm to the Powers which are at war against each other; in forbidding, under pains and penalties, that any citizens of the Kingdom should take service on board the belligerent ships, refusing them also in such a case any protection on the part of His Majesty's Government, and, on the contrary, leaving them under the jurisdiction of the laws of the other parties; it was necessary, on the other hand, to avoid the seas within the territorial jurisdiction of the Kingdom serving as a field for hostile operations between the belligerent Powers, or the ports and places of anchorage along the extensive Italian coasts serving to afford means of armaments, or being used as secure bases for hostile operations.

It having been agreed, recognized, and stipulated by international treaties that foreign subjects ought to submit to all the laws and regulations which relate to public security, and to the police of the country in which they sojourn or are domiciled, it follows as a logical and natural consequence that the laws and prohibitions contained in Art. 4 ought to be considered to extend to foreign subjects who happen to be in the Kingdom.

The law of humanity, which suggests that in cases of danger even an enemy who was harmless should be assisted, finds its application in the 7th Art. of the accompanying decree. To those ships or privateers of the belligerents who should be driven by stress of weather into the ports of the kingdom, or who should there seek refuge to repair damages, or to procure provisions or commodities, to such ships it is impossible to refuse shelter and assistance. Nevertheless the duties of humanity are confined to requirements necessary

for safety of navigation, and do not extend to any request for means which could in any shape or manner increase the offensive or defensive force of the said ships.

Consequently, if in any port, roadstead, or coast belonging to Your Excellency there should come any ships of war, or belligerent privateers, for refuge against bad weather, or to repair damages it had suffered, or to procure provisions or materials indispensable for pursuing its voyage with safety, Your Excellency, in virtue of Art. 10, could not refuse such requests, but would decline, according to the terms of Art. 9, to accede to any demand which could in any way increase the means of military offence or defence of the said ships.

The power of landing at or arrival in the harbours or coasts of the kingdom cannot, however, be granted to belligerent ships accompanied by prizes, except in the sole case of stress of weather. In the event of their being in need of repairs or provisions, they must first agree to set their prizes at liberty, and then their requests will be granted, but otherwise every assistance must be refused, the presence of a prize constituting a continuance of hostile operations within the waters under the territorial jurisdiction of a neutral country.

The second paragraph of Art. 10 provides that a supply of coal can only be granted 24 hours after the arrival of the belligerent ship which has made the demand. In this regulation Your Excellency will perceive that the undersigned has in view to prevent these sort of supplies serving for immediate offensive purposes against ships of the other belligerent party, which might be followed by the one which made the demand for fuel, even though it might have been requested for security of its navigation. The period of 24 hours specified in the said article may, in special cases, be extended by the authority of Your Excellency, but may never be reduced.

The regulation of Art. 11 of the subjoined Royal Decree requires, besides its exact observance, that the marine authorities should use all possible care to avoid, in the way they carry it out, any opportunity for immediate hostilities between the ships of the two belligerent parties. In interpreting the Art. 11 above mentioned the state of the weather must be taken into consideration in determining the interval allowed to elapse between the departure from port of the first ship and that of the second. The reciprocal conditions of sailing and steam ships must be kept in view, the sailing ship, in such a case, being first required to depart rather than that one possessed of mechanical motion, except in the event of the former being a mercantile steamer and the latter a public armed ship or a privateer.

On the arrival at anchorage of a ship-of-war of whatsoever nation, or in whatsoever locality of the kingdom, a copy of the accompanying Royal Decree shall be conveyed to it. If the said ship belong to a belligerent Power there shall be also given to it a copy of the enclosed schedule, with the request that the various columns may be filled up in the manner indicated. The same system will be followed towards privateers.

A copy of the said schedule will, as soon as it be filled up, be immediately forwarded to the undersigned in the proper way, the captains and officers of the port not omitting individually to inform the proper authorities under whom they are placed in order of departmental seniority.

The presence of considerable maritime forces in certain ports of the kingdom, as indicated by Art. 12, and specified in Art. 13, might in some cases hinder the free action of the Government, and the undersigned, following the example of the measures prescribed by other powers on this head, proposes that His Majesty should give his assent to the rules laid down in the accompanying articles.

While the rules contained in Article 12 should be scrupulously observed, the naval commandants of the

ports, specified in Article 13, must use every precaution in applying them, in order to avoid misunderstandings and to prevent the general maritime regulations from being viewed as bearing a character of mistrust.

Nevertheless, the captains of Ports, of which mention is made above, upon seeing the approach of a squadron comprising more than three vessels of war, shall be careful not to await their entrance into harbour before communicating to them the disposition aforesaid, but shall meet them outside the harbour as soon as it shall be manifest that they intend to anchor, and thus inform them in good time of the rules which obtain in that port with respect to the presence of foreign naval armaments.

Should the squadron comprise three ships or less, then the captains of the ports, following the directions of Article 14, shall go on board of the senior officer's ship, or the man-of-war should she be alone, and communicate to him the provisions of Article 12 with respect to the stay of the squadron in the harbour.

From the second paragraph of Article 12 Your Excellency will perceive that with the permission of the Government, ships of war, three or less in number, may be allowed to sojourn for a longer period than eight days in the ports mentioned in Article 13.

Therefore, should the commander of the squadron express a wish to prolong his stay beyond the period prescribed by the rules, Your Excellency will inform the undersigned of the same as soon as possible, and await a reply before requesting the commander to take his departure, even though the period of eight days were thereby exceeded.

Your Excellency will gather from Article 8 that the Government are desirous of making an exception to the rules laid down by the Royal Decree in favour of those vessels of war whose mission is exclusively scientific; and this exception, made some years ago, is to be extended also to vessels belonging to a belligerent state.

This exception refers, however, solely to those vessels whose mission is altogether beyond suspicion, and already recognized by the Government by diplomatic means, and has been assented to by them.

In such cases the respective Captains of Ports will be advised in time by the Ministry of Marine itself.

Whenever any doubt shall be entertained by the naval authorities as to the interpretation or application of the various cases contemplated in the articles of the said decree, they must refer at once to the Ministry in writing, and ask for instructions and explanations.

(Signed) CUGIA.

REPORT ADDRESSED TO THE KING BY THE MINISTER OF MARINE.

SIR, Turin, April 6, 1864.

THE Paris convention of April 16, 1856, has established new bases of public laws in naval war with respect to neutrals and to belligerent Powers.

Property belonging to the subjects of a State which remains neutral in war, even if embarked upon hostile ships, is now respected, nor does it constitute any longer, in most cases, prize of either belligerent.

The obligations undertaken by the Powers signatory to the above convention, and by the countries adhering to it, not to issue letters of marque to merchant ships, have also modified those principles of Maritime Law, which refer to privateers and their prizes.

These principles, however, intended to diminish the losses sustained by private individuals during a maritime war, were not accepted by all naval Powers indiscriminately, and for that reason the laws regarding privateering and its prizes contained in the various codes and regulations of maritime law could not be abrogated, being kept in reserve for such cases as those of a war with one of the countries which had refused its adherence to the principles laid down in the Paris convention.

This explains the motives why the Maritime Powers who framed these new bases of law should now also issue regulations regarding the armaments of privateers.

21659.

The conditions of the portions of North America at war induced, at the commencement of that struggle, the French Government to declare in a note dated 10th June 1861, and also the British Government in a letter of 12th January 1862, from the Foreign Office to the Lords of the Admiralty, what principles were to serve as a basis of neutrality to those Governments during the disastrous war in America.

Recently, however, and in spite of this declaration, hostile enterprise was carried into the waters of the neutral European Powers by certain vessels pertaining to these belligerents, which also sought to repair damages and obtain provisions in neutral ports.

Although the position of this kingdom may exclude the supposition that any of the armed vessels or privateers of the belligerent States of America might ever have occasion to approach the Italian coast under circumstances calculated to cause trouble to a neutral Power.

This supposition assumes another aspect when the movements of the ships of war belonging to the Northern Powers of Europe are considered now even in a state of armed warfare.

These facts will doubtless compel the attention of Your Majesty's Government to the consequences which may ensue to a neutral State, and also to provide that while the duties of neutrality are observed the rights which such a State ensures to the neutral Powers be equally respected.

While compiling the project of law which I have now the honour to submit to Your Majesty, besides detailing the principles which should regulate the conduct of the maritime authorities, the seafaring population, and Your Majesty's subjects to preserve the strict limits of neutrality now to be the guide of the Italian Government towards the Powers at present at declared war, I think it right to declare what regulations are already in force in many harbours of the kingdom, sanctioned by previous law, and common to all maritime nations, whether as a special right obtaining on certain parts of the coast (*Quale prerogativa propria su certi punti speciali delle coste*), or as being recognized by all those who have ever treated of International Maritime Law.

Whenever Your Majesty will approve of the considerations which are the basis of the scheme of the following decree, I would humbly hope that Your Majesty will deign to confer upon it Your Royal sanction.

E. CUGIA,  
Minister of Marine.

VICTOR EMANUEL II., ELECT KING OF ITALY.

With reference to the Royal Patents of 24th November 1827, which determine port regulations;

With reference to the Penal Law for the mercantile marine, dated January 15th, 1827;

With reference to the Royal Decree of December 22nd 1861, which extends the laws and regulations of the Mercantile Marine in force in the ancient provinces to all new provinces of the kingdom;

Considering the state of the existing relations between Italy and other maritime States which are in open hostilities;

Considering the rights reserved by International Maritime Law respecting certain special parts of the seaboard of any maritime State, tending to maintain and guarantee the state of neutrality of that kingdom towards belligerent powers; and to render valid, under all circumstances, those rights which might spring from or be derived from such a state (of neutrality), and also to preserve intact its liberty of action;

On the proposal of our Minister of Marine, in concert with our Minister for Foreign Affairs,

We have and do decree;

Article I.—It shall not be allowed for any ship of war or privateer belonging to a belligerent state to enter into or remain with prize in any port or harbour of the kingdom, except in case of necessity.

Article II.—In such exceptional cases, and under the conditions contained in the preceding Article,

ships of war and privateers must leave the coast of the kingdom as soon as the cause which forced them to seek shelter shall have been removed, and according to the dispositions of Article XI.

Article III.—No sale, exchange, transfer, or gift of objects of plunder shall be made under any pretext in the ports, harbours, or coasts of the kingdom.

Article IV.—No Italian subject shall take commission from either belligerent power to arm ships for war, or to accept letters of marque to cruise, or assist in any way in fitting out, arming, or preparing for war a vessel or privateer of the said belligerents.

Article V.—According to the 35th Article of the Penal Code for the Mercantile Marine, no Italian subject shall be enrolled or take service on any ship of war or privateer belonging to either belligerent.

Article VI.—No Italian subjects guilty of contravention of the rules laid down in the preceding Articles 4 and 5, or who shall commit any act against one of the belligerent powers, contrary to the duties attendant upon the neutrality maintained by the Italian Government towards the said parties, can claim protection against the acts or measures of whatever nature which the belligerents may deem right to enforce against them, and besides, they incur the penalties mentioned in Art. 5 of the present decree, according to the dispositions of the 80th Art. of the Penal Code for the Mercantile Marine, dated January 13th, 1827.

Article VII.—No belligerent vessel of war or privateer shall remain more than 24 hours in any port, harbour, or anchorage in the kingdom or adjacent waters, even though alone, except in cases of necessity caused by stress of weather, for repairs, or for want of necessary provisions for the safety of navigation.

Article VIII.—Vessels of war belonging to a friendly Power, even though belligerent, can anchor and remain in the ports and harbours of the Kingdom, when their mission is purely scientific.

Article IX.—In no case shall a belligerent vessel of war make use of an Italian port for warlike purposes, or for providing itself with arms and ammunition.

Neither shall it under pretext of repairs do anything to increase its force in action.

Article X.—There shall not be furnished to belligerent vessels of war or privateers other than provisions in portions for the subsistence of the crew, and the mere means for making those repairs actually necessary for the safety of the vessel.

Belligerent vessels of war and privateers wishing to coal can only do so 24 hours after their arrival.

Article XI.—When vessels of war, privateers, or merchant vessels of both belligerent Powers shall meet in the same port or harbour of the Kingdom, there shall be an interval of 24 hours between the departure of any vessel belonging to one Power and that of any vessel of the other Power.

The local maritime authority has power to prolong this interval according to circumstances.

Article XII.—In ports considered as naval fortresses or military fortresses; in anchorages where military or naval arsenals, dockyards, or other similar buildings, only three vessels of war belonging to the same Power shall be there at once, and then for no period exceeding eight days.

This period can only be extended in cases of necessity or for the sake of repairs, under formal permission of His Majesty's Government, to whom application must be made by the local maritime authorities through the Minister of Marine.

Article XIII.—The ports and places of anchorage treated of in the preceding Article are,

Genoa and adjacent Waters towards the shore of Foce; the Gulf of Spezia, Leghorn; Portoferraj; Naples; Baja; Castellamare; Gaeta; Messina (with the anchorages of Faro and Reggio in Calabria);

Milazzo; Syracuse; Augusta; Palermo; Frapani; Taranto; Brindisi; Ancona; Cagliari; Island of Maddalena.

Article XIV.—The Local Maritime Authorities of the plans mentioned in the preceding article shall, on the arrival of foreign vessels of war, present to their commanders, or commander of the squadron, a copy of the present regulations for their information, and request them to conform to them.

Article XV.—All maritime Authorities in the Kingdom are expected to adopt strictly all the measures prescribed in the present decree, which shall take effect from the day of its publication in the various parts of the Kingdom.

Article XVI.—All dispositions at present in force, and which are contrary to those contained in the present decree, are hereby abrogated.

We command that this present decree, furnished with the great seal and registered at the court "*dei conti*," be inserted in the official collection of Laws and Decrees of the Kingdom of Italy, desiring all it may concern to obey it and make it obeyed.

(Signed) VITTORIO EMANUELE.

(Countersigned) E. CUGIA.

Turin, April 6, 1864.

#### EXTRACT FROM ITALIAN NAVAL CODE, CHAPTER VII. —OF THE NEUTRALITY OF THE STATE TOWARDS BELLIGERENT POWERS.

In case of war between Powers towards which the State remains neutral, privateers or vessels of war with prizes shall not be received into the harbours or roadsteads, except in cases of stress of weather.

They will have to leave as soon as the danger has ceased.

No ship of war or privateer belonging to a belligerent will be allowed to remain longer than 24 hours in a port, harbour, or roadstead of the State, or in the adjacent waters, even when alone, except in case of necessity arising from bad weather, of shipwreck, or of an absence of the means necessary to carry on the navigation with safety.

In no case will they be permitted during their stay in the port, harbour, or roadstead of the State to sell, exchange, or barter, or even give away any of the prizes (taken in war).

The ships of war of a friendly Power even when belligerent are permitted to touch or even to remain in any harbour, port, or roadstead of the State on condition that the object of their mission be exclusively a scientific one.

In no case can a belligerent ship avail itself of an Italian port for the purposes of war, or of obtaining arms and munitions. It shall not be able under the pretence of repairs to execute any alterations or other works designed to augment its warlike force.

Nothing shall be furnished to vessels of war or to belligerent privateers beyond articles of food and commodities, and the actual means of repair necessary to the sustenance of their crews and the safety of their navigation.

Vessels of war or belligerent privateers wishing to fill up their stores of coal cannot be furnished with the same before 24 hours after their arrival.

In the case in which vessels of war, whether privateers or merchantmen of the two belligerent nations, are both together in a port, harbour, or roadstead of the State, there shall be an interval of at least 24 hours between the successive departures of the vessels of one belligerent and those of the vessels of the other.

This interval can be increased according to the circumstances brought before the maritime authorities of the place.

The capture of prizes as well as any other act of hostility between two belligerent ships within the territorial waters or the adjacent waters of the islands of the State will constitute a violation of territory.



## THE NETHERLANDS.

(Received from Her Majesty's Legation at the Hague.)

Note from the Minister for Foreign Affairs to His Majesty's Chargé d'Affairs.

La Haye, le 6 Mars 1867.

Le S.S., etc., etc., a eu l'honneur de recevoir la note que M. Ward, etc. etc. lui a adressée sous la date du 16 de ce mois, et dans laquelle il demande au nom de son Gouvernement des renseignements au sujet des lois, réglemens ou autres moyens, dont celui des Pays-Bas pourrait éventuellement faire usage afin d'empêcher, en dedans des frontières du Royaume des actes dont des Puissances belligérantes pourraient se plaindre comme d'une violation des devoirs de la neutralité.

En réponse le S. S., etc., etc., s'empresse de porter à la connaissance de M. Ward qu'il n'existe pas dans le Royaume du Pays-Bas une collection de lois ou réglemens concernant les droits et devoirs de la neutralité en général, ni de lois ou ordonnances spéciales pour l'une ou l'autre partie de cette matière importante du droit public externe. Le Gouvernement peut, ainsi qu'il sera dit plus loin, faire usage des articles 84 et 85 Code Pénal; mais, les cas exceptés où ceux-ci trouvent leur application, des dispositions législatives proprement dite n'ont pas été prises en vue de la neutralité de l'état et pour mettre le Gouvernement à même de sauvegarder cette neutralité, et de servir contre ceux qui tenteraient de la violer.

En général on peut dire que dans aucun pays la matière surmentionnée n'a été réglé ni mise sous le contrôle des lois et si la Grande Bretagne et les États-Unis ont leur "Foreign Enlistment Act," cette loi est d'une portée fort limitée. Jusqu'ici le Gouvernement des Pays-Bas n'a pas cru qu'il fut nécessaire ou opportun, de renfermer dans une ou plusieurs lois ce qui a trait aux droits et devoirs de la neutralité; mais il s'est borné à suivre scrupuleusement les principes de droit des gens moderne de l'Europe et à faire interner dans la Gazette Officielle (ainsi que par exemple la France et la Grande Bretagne l'ont fait également en 1861 et plus tard) des avertissements qui fixent l'attention des sujets Néerlandais sur le danger du transport de contrebande ou de dépêches, de la violation d'un blocus effectif, d'exercer la course ou d'accepter des lettres de marque. On y régle également l'admission dans nos ports des navires de guerre belligérants et un résumé des instructions spéciales envoyées aux gouverneurs des colonies Néerlandaises lors de la guerre civile aux États-Unis, a été communiqué à la Légation Britannique sous la date du 17 Décembre 1861.

L'année dernière ces avertissements ont reçu plus d'étendue et de précision; le Gouvernement a pris en outre l'engagement de veiller à ce que l'équipement de vaisseaux de guerre pour les parties belligérantes n'ait pas lieu dans les Ports Néerlandais. Un exemplaire de la Gazette Officielle du 20 Mars 1866, renfermant ces avertissements, se trouve ci-annexé (une erreur s'étant glissée dans le préambule, elle a été rectifiée dans la Gazette ci-jointe du 21 Mars).

Quant aux moyens coactifs dont le Gouvernement pourrait disposer pour empêcher des violations de sa neutralité, les articles 84 et 85 du Code Pénal peuvent aussi dans quelques cas servir à ce but. Ceux par exemple, qui tacheraient d'équiper ou de vendre des vaisseaux de guerre dans nos ports, pour le compte des belligérantes pourraient être poursuivies en vertu de ces articles; les navires alors seraient saisis comme pièce de conviction et par la même leur sortie serait empêchée.

Le S.S. prie M. Ward de communiquer ce qui précède à son Gouvernement en ajoutant qu'il serait fort agréable à celui des Pays-Bas d'apprendre quels sont les articles qui, aux yeux du Cabinet de Londres, doivent être rangés parmi ceux désignés sous le nom de contrebande de guerre.

Le S.S. prie M. Ward, etc., etc., etc.  
(Signé) DE ZUYLEN DE NIEVELT.

## TRANSLATION OF PROCLAMATION.—MINISTRY OF FOREIGN AFFAIRS.

As war is now existing between Brazil (in league with the Argentine Republic and Uruguay) and Paraguay, as well as between Spain and Chili, while Peru has declared war against Spain, the Minister of Foreign Affairs and the Minister of Justice are empowered by the King to advise by these presents all inhabitants of this kingdom by no means to meddle with privateering and to accept no foreign Letters of Marque. Should Netherlanders who practise any such privateering business or lend a hand in it be pursued before the Dutch authorities, the affairs of such people will be treated as criminally hostile, and will receive the punishment awarded by the law.

(Signed) The above-mentioned ministers,  
E. CREMERS,  
PICKÉ.

The Hague, March 17, 1866.

In consequence of the commands of the King, the Ministers of Foreign Affairs, of Justice, and of Marine bring to the knowledge of all whom it may concern, that for the preservation of a complete neutrality during the war between the powers mentioned in the previous amendment, the following determinations have been resolved upon:—

Article I.—No ships of war or privateers belonging to one of the belligerent powers with prizes shall be allowed to come into Dutch harbours or estuaries or remain there to refit, unless they are overtaken by evident necessity, such as misfortune at sea or want of provisions. They shall, moreover, so soon as the cause which delayed them be overcome, go on their way as speedily as possible.

Article II.—Proclaiming prizes, the selling, bartering, or giving away of all prizes and of objects coming out of them, also of plundered goods is forbidden in the harbours or estuaries of the Netherlands. It is also forbidden to unrig and sell ships of war or cruisers of the belligerent parties, also privateers (so far as these are admitted), unless the Government in ordinary circumstances gives judgment that the sale can take place without danger to the neutrality of the state.

Article III.—Privateers, even without prizes, are not admitted into Dutch harbours and estuaries, except in the cases specified in Article I. The conclusion of that Article is also applicable to this one.

They must take in no more provisions than they require for immediate use, of coal hardly as much as is necessary to supply their wants for 24 hours.

Article IV.—The ships of war of the belligerent parties, provided they submit to the international regulations for their admission into neutral ports, may remain for unlimited time in Dutch harbours and estuaries; they may also provide themselves with an unlimited quantity of coal.

The Government, however, reserves to itself the right, whenever it is thought necessary for the preservation of neutrality, to limit the duration of such stay to 24 hours.

Article V.—When ships of the belligerent parties (either ships of war, cruisers, or merchantmen) find themselves at the same time in the same harbour to refit, or in the inner waters of the country, a period of at least 24 hours must elapse between the departure of a ship of one belligerent party and the following departure of a ship belonging to another belligerent.

This period of time may be lengthened according to circumstances, by the maritime authorities of the harbours.

Article VI.—It is forbidden to furnish to the ships of war of either of the belligerent parties weapons or ammunition as well as to aid in any way to the increase of his weapons or accoutrements.

The above-named ministers,  
E. CREMERS,  
PICKÉ.

The Hague, March 17, 1866.

The Minister of War charged ad interim  
with the Department of Marine.

(Signed) J. W. BLANKEN.

The Minister of Foreign Affairs thinks it his duty in consequence of the war existing between the above-mentioned powers in South America to call the attention of shipowners, manufacturers, and freighters to the dangers and difficulties to which they expose themselves if putting themselves in opposition to their duties to the neutral powers, they do not respect an actual blockade or transport contraband of war, soldiers or despatches intended for one of the belligerents.

In these circumstances the parties concerned will be exposed to all results proceeding herefrom without any protection or intervention from the Netherland Government, whatever claims they may make.

Also the Government will keep strict watch against the fitting out in this country of armed ships on behalf

of the belligerent parties or the taking part therein by Netherlanders.

The above-named Minister,  
(Signed) E. CREMERS.

The Hague, March 17, 1866.

ARTICLES 84 ET 85 DU PÉNAL (CODE NAPOLÉON),  
LIVRE III, TITRE I.

Article 84.—Quiconque aura par des actions hostiles non approuvées par le Gouvernement exposé l'état à une déclaration de guerre, sera puni du bannissement; et si la guerre s'en est suivie de la déportation.

Article 85.—Quiconque aura par des actes non approuvés par le Gouvernement exposé des Français à éprouver des représailles sera puni du bannissement.

PORTUGAL.

MY LORD, Lisbon, February 26, 1867.

In reply to your Lordship's despatch marked circular, of the 14th instant, instructing me to procure information respecting the Neutrality Laws in Portugal, I have the honor to state to your Lordship that I have this day received from the Portuguese minister a note, of which a copy, together with a translation by Mr. Duff, is herewith transmitted. Your Lordship will perceive that its information is restricted to furnishing me with copies of the Portuguese declarations of neutrality, which are already in the possession of Her Majesty's Government.

I have therefore requested further information in a note, of which I beg also to enclose a copy, as to what are the laws, regulations, or any other means at the disposal of the Portuguese Government for preventing within their territory any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which M. Cazal Ribeiro has transmitted to me.

I have the honor to be, &c.

A. PAGET.

The Right Hon. Lord Stanley, M.P.,  
&c. &c. &c.

Foreign Department, Lisbon,  
February 25, 1867.  
(Recd. 26.)

MOST ILLUSTRIOUS AND EXCELLENT SIR,

I RECEIVED the note which your Excellency was pleased to address to me on the 19th instant, wherein you inform me that inasmuch as Her Majesty's Government had appointed a Commission to inquire into the Neutrality Laws in England, and were desirous to obtain information respecting the laws, regulations, or any other measures that may have been adopted in other countries upon this subject, they had instructed your Excellency to point out to them what were the laws and regulations of Portugal for the purpose of preventing, within the Portuguese territory, any acts that might be considered to be a violation of the laws of neutrality.

And as your Excellency requested me to forward to you copies of the laws and regulations to which you refer, as well as any other information that I might be able to furnish upon this point, I have the honour to state to your Excellency that as Portugal professes the most liberal principles with regard to neutrality, and as it is desirous to co-operate towards the consolidation of those principles, and the securing of the freedom of the maritime trade and navigation of neutral powers, it did not hesitate, so far back as the year 1782, to accede to the declaration made by Russia on the 28th of February 1780 to several powers, and to agree in the convention entered into with that empire, on the 12th of July of the above-mentioned year of 1782, to identical principles with those which are laid down in the second, third, and fourth articles of the declaration of the Congress of Paris of the 16th of April 1856, on maritime law, a declaration to which Portugal fully and entirely adhered, because it was in

accordance with the doctrines which it has for so many years professed with regard to neutrality.

Before the adhesion of Portugal to the declaration of the 16th of April 1856, to which I allude, and at the time of the eastern question, the decree of the 5th of May 1854 (of which a copy is enclosed) was published in order that the most strict and absolute neutrality should be observed in this kingdom, in regard of those powers which were then in a state of war.

On the 29th of July 1861 the Portuguese Government being desirous, under the circumstances which then occurred with respect to the United States of America, to enforce a compliance with the principles set forth in the Declaration of Paris of the 16th of April 1856, published the decree of that date, of which I also forward the enclosed copy to your Excellency.

Finally, by the decree of the 2nd of July 1856, on the occasion of the breaking out of the war between Italy and Austria, as well as between Russia, that empire and other States of Germany, and of which a copy was sent to the several chiefs of missions of Portugal, in order that they should communicate the provisions contained therein to the Government to which they were accredited, your Excellency will see what are the neutrality laws now in force in Portugal.

I avail myself, &c.

Sir A. Paget, (Signed) CAZAL RIBEIRO.  
&c., &c., &c.

British Legation, Lisbon,

M. LE MINISTRE, February 26, 1867.

I HAVE the honor to acknowledge the receipt of your Excellency's note of yesterday's date respecting the Neutrality Laws of Portugal, and to thank your Excellency for the documents with which you have been good enough to furnish me.

There is one point, however, upon which Her Majesty's Government are most desirous of information, to which your Excellency's note and the enclosures it contains do not refer, namely, what laws or regulations, or any other means, are at the disposal of the Portuguese Government for preventing within its territory any acts which would be violations of the Portuguese neutrality laws, as contained in the declarations of neutrality which your Excellency has transmitted to me. If your Excellency would supply me with this information I should be greatly obliged.

I avail myself, &c.

H. E. M. Cazal Ribeiro. (Signed) A. PAGET.  
MY LORD, Lisbon, March 29, 1867.

WITH reference to my despatch of the 26th ultimo, I have the honor to transmit to your Lordship a copy, with translation by Mr. Duff, of a further note which I have received from the Portuguese Minister respecting the Neutrality Laws and their enforcement in Portugal.

I have the honor to be, &c.

The Right Hon. Lord Stanley, M.P. A. PAGET.  
&c. &c. &c.



Foreign Department, Lisbon,  
March 18, 1867.  
(Received 22nd.)

MOST ILLUSTRIOUS AND EXCELLENT SIR,

I HAD the honor to receive the note which your Excellency was pleased to address to me on the 26th of February last, requesting to be informed, in compliance with the wishes expressed by your Government, what laws or means does the Portuguese Government possess to enable it to prevent within its territory any acts of violation of neutrality.

In reply, it is my duty to state to your Excellency that the laws and regulations in the matter are those which were enclosed in my note of the 25th of that month, or were mentioned in those documents, and the means of execution in the case of any violation of neutrality are, criminal proceedings, the use of force, complaints addressed to foreign Governments, or any other means in order to meet some particular occurrence.

I avail myself, &c.  
(Signed) CAZAL RIBEIRO.  
Sir A. B. Paget, &c. &c. &c.

#### PRUSSIA.

(Received from Her Majesty's Embassy at Berlin.)  
Note from the Minister of Foreign Affairs to Her Majesty's Ambassador.

Berlin, March 11, 1867.

The undersigned has the honour to state in reply to the note of Lord Loftus, &c., of the 15th ultimo, that the decrees contained in the Prussian code of laws for preventing, during a war between foreign states, acts on Prussian territory, which could be construed as an infringement of neutrality, are partly direct and partly indirect.

A direct decree is contained in section 78 of the Code of Punishments of the 14th April 1851, by which hostile acts committed by a Prussian in his own country or abroad, or by a foreigner during his residence in Prussia, against a foreign state or its ruler, are punishable, if the same acts committed against the King of Prussia would be held to be high treason. But with respect to acts committed against non-German States, this decree is only enforced when reciprocity is guaranteed by public decrees or treaties.

The punishment consists in imprisonment in the house of correction for from two to 10 years; but under extenuating circumstances, in confinement for one to 10 years. Should the intention be discovered before the act is carried out, confinement from six months to three years.

It is stated in section 61 of what nature these hostile acts must be to render them liable to punishment, viz., every attempt which has for its object:—

1. To murder the king, to take him prisoner, to deliver him into the power of the enemy, or to render him incapable of governing, or

2. Forcibly to alter the succession to the throne, or the constitution of the State, or

3. To incorporate either entirely or partially the territory of the Prussian State into a foreign State, or to separate a portion of territory from the whole.

Furthermore, in section 111, whoever enlists or causes the enlistment of a Prussian in a foreign military service will be punished with imprisonment for from three months to three years. The attempt to commit this act will be punished in the same manner.

Under the head of indirect preventative measures against breach of neutrality come all those laws which enable the Government generally to oppose the maturing of acts of violence within the territory of the State. The following clauses of the book of the Penal Code apply to this.

§ Whoever assembles or commands armed bodies of men without authority, or who furnishes with arm or the necessaries of war, a body of men whom he knows to be assembled without the permission of the law, will be punished with imprisonment not exceeding two years.

Whoever takes part in such armed meeting, has rendered himself liable to imprisonment for a term not exceeding one year.

§ 340.

2. Whoever secretly, or in defiance of the authorities, stores up arms or ammunition, it not being his trade, will be punished with a fine of 50 Rthls. or six weeks' imprisonment. In these cases a confiscation of the stores takes place.

The undersigned, &c.,  
For the Minister of Foreign Affairs,  
(Signed) THILE.

#### RUSSIA.

MY LORD, St. Petersburg, August 29, 1867.

WITH reference to your Lordship's despatch circular, of February 14, instructing me to ascertain and report what laws, regulations, and other means the Russian Government possess for preventing acts within its territories of which belligerents might complain as a violation of the duties of neutrality, I have the honour to enclose a copy of a note which I have received from M. de Westmann, stating that with the exception of Article 259 of the Russian Penal Code, which forbids Russian subjects to afford military succour to any Power in a state of war with a Government allied to that of Russia, there are no laws existing in this country of the nature alluded to in your Lordship's despatch. A translation of the Article of the Penal Code referred to is enclosed.

I have, &c.

(Signed) ANDREW BUCHANAN.  
The Lord Stanley, M.P.,  
&c. &c. &c.

St. Petersburg, le 1<sup>er</sup> Avril 1867.

M. L'AMBASSADEUR,

EN réponse à la note que vous avez bien voulu m'adresser le 26 Février, j'ai l'honneur d'informer

votre Excellence qu'à l'exception du § 259 du Code Pénal de l'Empire, qui contient une défense aux sujets Russes de favoriser les succès militaires d'une puissance en guerre avec un gouvernement allié de la Russie, la législation Russe ne renferme pas de dispositions, ayant pour but d'empêcher sur le territoire de la Russie l'accomplissement d'actes dont les puissances belligérantes pourraient se plaindre comme d'une violation du principe de neutralité.

Agréez, &c.

(Signé) WESTMANN.

TRANSLATION.—§§ 259. PENAL CODE OF RUSSIA.

If any Russian subject in time of peace shall by open force attack the inhabitants of a neighbouring state or those of any other foreign country, and shall thereby subject his own country to the danger of a rupture with a friendly power, or even to an attack by such foreign subjects on the territory of Russia, for such a crime against international law, the offender and all those who participate voluntarily in his enterprise, with a knowledge of its objects and illegality, shall be sentenced to lose all their civil rights, and be condemned to hard labour in a fortress for a term of eight to ten years.

## SPAIN.

(Received from Her Majesty's Legation at Madrid.)  
 Note from the Minister for Foreign Affairs to Her Majesty's Minister.

## Translation.

SIR,

Palace, 22nd February 1867.

I HAVE received the note which your Excellency addressed to me on the 17th instant, requesting, in the name of your Government, a copy of the Laws and Regulations in force in the Peninsula concerning Neutrality.

In this matter Spain has always adapted herself to the principles of International Right, and solely on the occasion of the late war in the United States did Her Majesty's Government issue a decree on the Neutrality to be observed by Spanish subjects during that contest.

Of that document (the only one existing on the subject) a copy has been made which I have the honour to transmit to your Excellency in answer to your above-mentioned note.

I avail, &amp;c.

(Signed) E. D. CALONGE.

H.B.M. Minister Plenipotentiary.

## Translation.

Royal Decree concerning Neutrality in the United States War, issued by H. C. M., on the 17th June 1861.

Taking into consideration the relations which subsist between Spain and the United States of America, and the propriety of causing no detriment to the reciprocal sentiments of good understanding on account of the grave events which have happened in that Republic, I have resolved to maintain the strictest neutrality in the contest entered into between the Confederate States of the South and the Federal States of the Union; and in order to avoid the prejudice which might result to my subjects and to navigation and commerce, in consequence of the want of clear dispositions by which to regulate their conduct,

in accordance with my Council of Ministers I decree the following:

Art. 1. The fitting-out, supplying, and equipment of any privateer in any of the ports of the monarchy is prohibited, whatever may be the flag which she may hoist.

Art. 2. The proprietors, masters, or captains of merchant vessels are also prohibited from receiving letters of marque, and from contributing in any way to the armament and equipment of vessels of war or privateers.

Art. 3. Ships of war or privateers with prizes are prohibited from entering and remaining for more than 24 hours in the ports of the monarchy, except in the case of forced arrival.

When the latter shall occur, the authorities shall watch the ship, and shall oblige her to put to sea as soon as possible, without permitting her to supply herself with anything more than that which is necessary for the moment, but under no circumstances with arms or with munitions of war.

Art. 4. Articles taken from prizes shall not be sold at the ports of the monarchy.

Art. 5. The transport of all articles of commerce under the Spanish flag is guaranteed, except when intended for the blockaded ports.

The carrying of effects of war and of papers or communications for the belligerents is prohibited. Contraveners will be responsible for their own acts, and will have no right to the protection of My Government.

Art. 6. All Spaniards are prohibited from enlisting in the belligerent armies, and from engaging themselves for service in vessels of war or privateers.

Art. 7. My subjects will abstain from any act which, by violating the laws of the kingdom, might be considered contrary to neutrality.

Art. 8. Contraveners of the above orders will have no right to the protection of My Government, they will suffer the consequences of the measures taken by the belligerents, and will be punished according to the laws of Spain.

## SWEDEN.

(Received from Her Majesty's Legation at Stockholm.)  
 Note from the Minister for Foreign Affairs to Her Majesty's Minister.

MONSIEUR, Stockholm, le 23 Fevrier 1867.

POUR satisfaire à la demande que vous m'avez faite, Monsieur, par la note que vous m'avez fait l'honneur de m'adresser le 19 ct., je m'empresse de vous informer que les dispositions de la déclaration du Congrès de Paris en date du 16 Avril 1856, et de l'ordonnance ci jointe en date du 8 Avril 1854, sont les seules ici en vigueur en matière de neutralité et que, du reste, il est chez nous admis en principe que là où il n'existe par de loi ou pacte positif pour régler les droits et les devoirs des neutres en temps de guerre, les règles ou principes que l'usage général des nations a consacrés doivent trouver leur application.

Veuillez agréer, Monsieur, &amp;c.

(Signé) MANDERSTRÖM.

Monsieur Jerningham.

&amp;c. &amp;c. &amp;c.

## ORDONNANCE DU ROI.

*Relativement à ce qui doit être observé, pour la sûreté du commerce et de la navigation de la Suède en temps de guerre entre des Puissances étrangères.*

Donnée à Stockholm le 8 Avril 1854.

Nous, Oscar, par la grâce de Dieu, Roi de Suède et de Norvège, des Goths et des Vandales, savoir faisons: qu'ayant reconnu la nécessité, en vue des collisions qui menacent d'éclater entre des Puissances maritimes étrangères, que ceux de nos fidèles sujets, qui exercent le commerce et la navigation, observent

rigoureusement les obligations et précautions requises pour assurer au pavillon Suédois tous les droits et privilèges qui lui reviennent en qualité de pavillon neutre, et pour éviter également tout ce qui pourrait en quelque manière le rendre suspect aux Puissances belligérantes et l'exposer à des insultes; Nous avons jugé à propos, en rapportant ce qui a été statué précédemment à cet égard, d'ordonner que les règles suivantes devront dorénavant être généralement observées:

§ 1. Pour être admis à jouir des droits et privilèges revenant au pavillon Suédois en sa qualité de neutre, tout bâtiment Suédois devra être muni des documents qui, d'après les Ordonnances existantes\*) sont requis pour constater sa nationalité, et ces documents devront toujours se trouver à bord du bâtiment, pendant ses voyages.

§ 2. Il est sévèrement défendu aux Capitaines d'avoir des papiers de bord et des connoissemens doubles ou faux, ainsi que de hisser pavillon étranger, en quelle occasion ou sous quel prétexte que ce soit.

§ 3. S'il arrivait que, pendant le séjour d'un bâtiment Suédois à l'étranger, l'équipage, soit par désertion, mort, maladie ou autres causes, ce trouvât diminué au point de n'être plus suffisant pour la manœuvre du navire, et qu'ainsi des matelots étrangers devront être engagés, ils devront être choisis du préférence parmi les sujets de Puissances neutres; mais dans aucun cas le nombre des sujets des Puissances belligérantes, qui se trouveront à bord du navire, ne devra excéder un tiers du total de l'équipage. Tout

\* Les Ordonnances Royales du 1 Mars 1841 et du 15 Août 1851.

changement de cette nature dans le personnel du navire, avec les causes qui y ont donné lieu, devra être marqué par le Capitaine sur le rôle de l'équipage, et la fidélité de cette annotation devra être certifiée par le Consul ou Vice-Consul Suédois compétent, ou bien, en cas qu'il ne s'en trouvât point sur les lieux, par la Municipalité, le Notaire public ou quelqu'autre personne de la même autorité, suivant les usages des pays respectifs.

§ 4. Les bâtimens Suédois, en qualité de neutres, pourront naviguer librement vers les ports et sur les côtes des nations en guerre; toutefois les Capitaines devront s'abstenir de toute tentative d'entrer dans un port bloqué, dès qu'ils ont été formellement prévenus de l'état de ce port par l'officier qui commande le blocus.

Par un port bloqué, on entend celui qui est tellement fermé par un ou plusieurs vaisseaux de guerre ennemis stationnés et suffisamment proches, qu'on ne puisse y entrer sans danger évident.

§ 5. Toutes marchandises, même propriété des sujets des Puissances belligérantes, pourront être librement menés à bord des bâtimens Suédois, en leur qualité de neutres, à la réserve des articles de contrebande de guerre. Par contrebande de guerre il faut entendre les articles suivans : canons mortiers, armes de toute espèce, bombes, grenades, boulets, pierres à feu, mèches, poudre, salpêtre, soufre, cuirasses, piques, ceinturons, gibernes, selles et brides, ainsi que toutes fabrications pouvant servir directement à l'usage de la guerre,—en exceptant toutefois la quantité de ces objets qui peut être nécessaire pour la défense du navire et de l'équipage.

Pour le cas qu'à l'égard de la définition des objets de contrebande de guerre, des changemens ou additions devraient être introduits par suite de conventions avec les Puissances étrangères, il en sera ultérieurement statué.

§ 6. Il est interdit à tout Capitaine Suédois de se laisser employer, avec le bâtiment qu'il conduit, à transporter, pour aucune des Puissances belligérantes, des dépêches, des troupes, ou des munitions de guerre, sans y être contraint par une force réelle; auquel cas il devra protester formellement contre un tel emploi de la force.

§ 7. Les bâtimens des Puissances belligérantes pourront importer dans les ports Suédois et en exporter toutes denrées et marchandises, pourvu que, d'après le tarif général des douanes, elles soient permises à l'importation ou à l'exportation, et à la réserve des articles réputés contrebande de guerre.

§ 8. Il est défendu à tout sujet Suédois d'armer ou d'équiper des navires pour être employés en course

contre quelqu'une des Puissances belligérantes, leurs sujets et propriétés; ou de prendre part à l'équipement de navires ayant une pareille destination. Il lui est également défendu de prendre service à bord de corsaires étrangers.

§ 9. Il ne sera permis à aucun corsaire étranger d'entrer dans un port Suédois et de séjourner sur nos rades. Des prises ne pourront non plus être introduites dans les ports Suédois, autrement que dans le cas de détresse constatée. Il est également interdit à nos sujets d'acheter des corsaires étrangers des effets capturés, du quelle espèce que ce soit.

§ 10. Lorsqu'un Capitaine, faisant voile sans escorte, est rencontré en pleine mer par quelque vaisseau de guerre de l'une des Puissances belligérantes, ayant droit de contrôler ses papiers de bord, il ne doit ni se refuser, ni chercher à se soustraire à cette visite; mais il est tenu à produire ses papiers loyalement et sans détour, ainsi qu'à surveiller que ni depuis que son navire ait été hélé, ni pendant la visite, aucun des documens concernant le navire ou son chargement ne soit soustrait ou jeté à la mer.

§ 11. Lorsque les bâtimens marchands font voile sous escorte de vaisseaux de guerre, les Capitaines devront se régler sur ce qui est prescrit par l'ordonnance Royale du 10 Juin 1852.

§ 12. Le Capitaine qui observe scrupuleusement tout ce qui lui est prescrit ci-dessus, doit jouir, d'après les traités et le droit des gens, d'une navigation libre et sans gêne; et si, non-obstant, il est molesté, il a droit de s'attendre à l'appui le plus énergique de la part de Nos Ministres et Consuls à l'étranger, dans toutes les justes réclamations qu'il pourra faire pour obtenir réparation et dédommagement; au lieu que la Capitaine qui omet et néglige d'observer ce qui vient de lui être prescrit pour sa route, ne devra s'en prendre qu'à lui-même des désagréments qui pourront résulter d'une pareille négligence, sans avoir à espérer Notre appui et protection.

§ 13. Dans le cas qu'un navire Suédois fut saisi, le Capitaine doit remettre au Consul ou Vice-Consul Suédois, s'il s'en trouve dans le port où son bâtiment est amené, mais, à son défaut, au Consul ou Vice-Consul Suédois le plus voisin, un rapport fidèle et dûment certifié des circonstances de cette prise avec tous ses détails.

Mandons et ordonnons à tous ceux à qu'il appartiendra de se conformer exactement à ce que dessus. En foi de quoi Nous avons signé la présente de Notre main et y avons fait apposer Notre sceau Royal. Donné au Château de Stockholm le 8 Avril 1864.

(L.S.) OSCAR.  
J. F. Fähræus.

#### UNITED STATES.

MY LORD, Washington, February 18, 1867.

I HAVE the honour to acknowledge the receipt of your Lordship's telegram of the 14th instant, inquiring what laws, regulations, or other means the United States Government possess for the prevention of acts within their territories of which belligerents might complain as violating duties of neutrality.

The only law on the subject is the Neutrality Act of 1818. In the accompanying volume of Brightley's Digest I have marked the law. In the foot-notes your Lordship will find the principal cases which have been decided in the courts of the United States bearing upon the construction of the statutes.\*

\* NOTE.—The references here mentioned are the following:—

(a) At end of sect. 1. "See 2 McLean 2; 5 *Ibid.* 250."  
(b) Sect. 2, after words "If any person." "Foreign consuls are not exempted from the penal effect of the statute. A foreign minister who violates its provisions is liable to be summarily dismissed. 7 Opinions, 367." [N.B. The opinion here referred to is that of Caleb Cushing, which has been circulated among the Commissioners.]

(c) In 2nd sect. after the second "himself." "This Act is declaratory of the pre-existing law of nations, and was intended to aid the executive in the enforcement of that law. 'The *Santissima Trinidad*.' 1 Brock. 7 Opinions, 367."

When a complaint is addressed to the Government of a vessel being fitted out in breach of the law, the

(d) In sect. 2, after word "Enlisted." "It is not a crime under this Act to leave this country with intent to enlist in foreign military service; nor to transport persons out of the country with their own consent who have an intention of so enlisting. To constitute a crime under this statute such persons must be hired or retained to go abroad with the intent of such enlisting. *United States v. Karinski*. 8 Law reports, 254. See 4 Opinions, 336."

(e) In sect. 3, after the first "arm." "Either will constitute the offence; it is not necessary that the vessel should be armed, or in a condition to commit hostilities on leaving the United States. *United States v. Quincy*, 6 Pet. 445. See 3 Opin. 738, 741."

(f) In sect. 3, after the word "armed." "See *United States v. Guinet*, 2 Dall. 328."

(g) In sect. 3, after words "with intent." "Any degree of intent to commit hostilities against a nation with which this Government is at peace is sufficient. 5 Opin. 92. But there must be a fixed intention that the vessel should be so employed; a mere wish so to employ her, if he could obtain funds on her arrival at a foreign port for the purpose of arming her, is not sufficient to render the defendant guilty. *United States v. Quincy*, 6 Pet. 445; *Moodie v. 'The Alfred'*, 3 Dall. 307. But the fact that the arms and ammunition were cleared out as cargo, and the men shipped as for a common mercantile

matter is referred for investigation to the District Court Attorney (an officer of the Federal Government) in the state in which the vessel is situated. It is his duty to see that the law is respected, and it is incumbent upon him to receive and collect evidence, and to libel the ship, if in his opinion the circumstances of suspicion are sufficient to warrant the institution of legal proceedings against her. He then reports the case to the Government, who decide either in proceeding with the libel or on releasing the vessel. In the latter event it is in the power of the Government to call upon the owners to give bonds in double the value of the vessel not to employ her for illegal purposes. This course is pursued where the evidence shows grounds for suspicion, but when the grounds are not strong enough to warrant a prosecution, with a view to forfeiture. Mr. Bemis' in a pamphlet on the Neutrality Laws, states that the bonds only affect the owners so long as the vessel remains in their possession, and he seems to be of opinion that in the event of a *bonâ fide* sale, and of her subsequent employment as a cruiser or privateer against a friendly power, it would not be found possible to enforce the penalty against the original owners.

I enclose a newspaper extract with reference to the proceedings against a steamer called the "R. R. Cuyler," which will show the manner in which the Government acts. In this case the Attorney-General directs that the libel be dismissed, and the vessel restored to the owners on their executing a bond as required by statute.

Though there are no specific regulations in force as to the mode in which the law is to be carried out, I apprehend it may be inferred that this Government would consider any circumstances of suspicion attending the fitting out or equipment of a ship as sufficient to warrant her detention until the case can be investigated by the district attorney. It is not necessary that the allegations should be of such gravity as, if proved, would warrant her forfeiture. The owners may be compelled by law to give a bond previous to the sailing of an armed vessel, to guard against the possibility of her being employed against a friendly power, should war exist between two countries at peace with the United States. And a similar bond can be exacted under certain contingencies mentioned in the statute from the owners of any vessel built for warlike purposes and laden with war materials.

It is to be presumed that these provisions are intended to apply to cases of war-ships fitted out during time of war, where no direct evidence appears of illegal intent, but where the Government thinks it advisable to call upon the owners to find security for keeping the peace. In order to effect this object it is evident that a wide discretion must be left to the Government for the exercise of the power of detention.

I may remark that the Government of the United States has considerable advantages in proceeding against vessels under the statute. They have on the spot where the preparations are being made the district attorney, a legal officer responsible to the Government, to whom the duty of investigation is committed. The libel is in the nature of a proceeding in Admiralty "in rem." It is decided by a judge conversant with International and Maritime Law, and without the intervention of a jury. The failure of the attempt to

stop or punish the persons engaged in the expeditions against Cuba, and the suspension of proceedings against the men who took part in the Fenian raids against the British Provinces, in spite of the clearest evidence, shows the difficulty of enforcing the law, when it has to be put in operation "in personam," and when it is dependent on the verdict of a jury.

I have, &c.,

FREDERICK W. A. BRUCE.

The Lord Stanley, M.P.

&c. &c. &c.

THE STEAMER R. R. CUYLER.—Conspiracy on Board to assume Control of the Vessel at Sea—The Owners not culpable—The Vessel to be bonded.

New York, February 15.

The suspicion that the steamship "R. R. Cuyler" was intended for a piratical enterprise appears, from facts which have come to light since the seizure by the Government, to have been well founded. The theory advanced, which there is no grounds for doubting, is, that there was a conspiracy on board to assume control of the vessel after she had gone to sea, and thus deprive the lawful owners of their property, who were not to receive their pay for her until she was delivered at Laguayra, Venezuela, to the Colombian Government. Whatever may have been intended by the extraordinary personages on board, and however they may have intended to execute their plans, are matters no longer to be regarded with alarm, as the party has been dispersed, and the owners required to file bonds in twice the value of the vessel that she shall not be used by them to commit hostilities against any nation with which this Government is at peace. This is sufficiently set forth in the following letter, received by Collector Smythe from the Secretary of the Treasury yesterday :

ORDER TO THE COLLECTOR.

SIR, Treasury Department, February 1867.

I TRANSMIT herewith a copy of the letter of this date from the Attorney-General of the United States at New York to the United States District Attorney at New York relative to the steamship "R. R. Cuyler." You are hereby instructed to carry out the decision of the President, to release the "R. R. Cuyler" to the owners, upon being advised in writing by the United States District Attorney that the required bond has been given and the proceedings in court dismissed.

Very respectfully,

H. McCULLOCH,

Secretary of the Treasury.

H. A. Smythe, Collector of Customs,  
New York.

The following is a copy of the letter of the Attorney-General :

THE ATTORNEY-GENERAL'S LETTER.

Attorney-General's Office, Feb. 13, 1867.

In re steamship "R. R. Cuyler."

Samuel G. Courtney, Esq., United States Attorney,  
New York City.

SIR,

THE President has had under his consideration the case of the steamship "R. R. Cuyler," now detained at the port of New York under a seizure made by the customs officers, and a libel filed by you on or about the 5th of the current month, for alleged infraction of our neutrality laws.

The decision of the President had thereon is that such circumstances are shown as to require bond and security to be given by the owners, Messrs. Sturges, Taylor, Hubbell, and Dollard, according to the provisions of the 10th and 11th sections of the Act of April 20, 1818, entitled, "An Act in addition to the Act for the Punishment of certain Crimes against the United States, and to repeal the Acts therein named."—3rd vol. Statutes at Large, p. 447.

You are accordingly instructed that, upon the entering and delivery to you of such bond to the United States, with sufficient sureties, prior to the

"voyage, will not vary the case. The *Gran Para*, 7 Wheat. 486."

(A) In sect. 3, after word "people." "United States v. Quincy," 6 Pet. 467."

(i) In sec. 5, after first "vessel." "As to what amounts to the augmentation of the force of a foreign armed vessel within our ports, see *United States v. Grassin*, 3 W. C. C. 65; the schooner 'Nancy,' Bee. 73; *Moodie v. The Ship 'Brothers'*, *Ibid.* 76; *Moodie v. The 'Betty Cathcart'*, *Ibid.* 292; *United States v. Guinet*, 2 Dall. 328; 2 Opin. 86."

(k) In sect. 6, after first "United States." "It is unimportant that such association originated beyond seas, if the expedition was carried on from hence. Ex parte Needham; Pet. C.C. 487."

(l) In sect. 6, after words "means for." "See 5 McLean, 250, 306; 2 Wheat. Cr. Cas. xlviii., 3 *Ibid.* 174."

clearing of the vessel, in double the amount or the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or State, or of any colony, district, or people with whom the United States are at peace, as provided by the said 10th section, you will dismiss the proceedings so instituted.

Instructions will be sent to the collector of the port by the Secretary of the Treasury for the release of the vessel to her owners, when you advise them that the bond has been given and the proceedings in court have been dismissed.

I am very respectfully, &c.,

HENRY STANBERRY,

Attorney-General.

**CASE OF THE "R. R. CUYLER."**—Alleged Conspiracy of an ex-rebel Captain and Crew to turn the vessel into a Chilian Privateer—Bonds required by the Government.

(From the "New York Post.")

The steamship "R. R. Cuyler" seized some time ago by the customs authorities of this port, and held for examination on a charge that she was destined for an illegal voyage, is still in the hands of the officers, but the former owners and claimants of the vessel are confident she will soon be released. The theory that there was a conspiracy on board to take her from the owners, who were not, it is declared, to get their pay for her, or all of it, till she should be delivered at Laguayra, Venezuela, to the Colombian Government, is now, it appears, fully accepted, and it goes into the case as part of the matter which the Attorney-General will consider when he decides whether the "R. R. Cuyler" ought to be held to await the action of the courts with a view to her condemnation if the charges should be sustained.

This theory is founded on information already partially given to the public. The evidence that the vessel was to become a Chilian privateer, or have some other illegal character, is considered complete; and her owners do not hesitate to admit that they would probably have lost her, except for the interference of the United States authorities. This avowal

raises many interesting points about the fitting out of the "Cuyler," which will be fully investigated if an examination is entered upon, but which otherwise may never be brought out.

What is now recognized as the important fact of the case is that the conspiracy was fully matured, and was to be executed by ex-rebels, who comprised the passengers of the vessel. It appears that the getting together of these men and the equipment of them, with the purchase of some war material, costing more than 100,000g, were the parts of the business about which the owners had no direct knowledge, and Read, the rebel officer who had charge of the numerous "passengers," only a part of whom it seems were on board the "Cuyler" at the wharf when she was ready to sail at the time of the seizure, was at the head of the piratical expedition. Exactly what was to be done with the "Cuyler" after she had left this port, and was in the hands of the desperadoes who had been gathered to take possession of her, the representatives of the men whose interests were involved do not undertake to say.

These things in some respects explain and in other respects complicate and mystify the affair of the "Cuyler." What influence they may have on the determination of the matter is a curious question. That the vessel, if she had been allowed to go, would have made a legal voyage, nobody asserts; not is it likely that the Government officers will urge that the American owners were guilty of complicity with the rebels, or with the persons, whoever they may have been, who furnished the means required at the beginning of the suspicious undertaking.

In a later edition the "Post" says:—

"Collector Smythe has to-day received a letter from the Secretary of the Treasury directing that the steamship "R. R. Cuyler" be released when the owners of her give bonds to the Government in double the amount of her value that she shall not be used by them to commit hostilities against any nation with which this Government is at peace."

If bonds are not given, and no new instructions come from Washington, proceedings for the confiscation of the vessel will go on. No intimation has yet been given as to what the course of the claimants will be.

The following declarations and notifications were issued by the several countries hereunder specified, on the breaking out of the Civil War in America.

#### FRANCE.

##### DECLARATION respecting NEUTRALITY of FRANCE during STRUGGLE in AMERICA.

*Paris, le 10 Juin 1861.*

LE Ministre des Affaires Etrangères a soumis à l'Empereur la déclaration suivante, que Sa Majesté a revêtue de son approbation :—

##### *Déclaration.*

Sa Majesté l'Empereur des Français, prenant en considération l'état du paix qui existe entre la France et les Etats Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le Gouvernement de l'Union et les Etats qui prétendent former une Confédération particulière.

En conséquence, Sa Majesté, vu l'Article 14 de l'Ordonnance de la Marine du mois d'Août 1861, l'Article 3 de la Loi du Avril 1825, les Articles 84 et 85 du Code Pénal, 65 et suivants du Décret du 24 Mars 1852, 313 et suivants du Code Pénal Maritime, et l'Article 21 de Code Napoléon,

Déclare :

1. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'une navire de guerre ou corsaire de l'une des deux parties.

4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'un ou de l'autre des belligérants.

5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

Les contrevenants aux défenses et recommandations contenues dans la présente Déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la Loi du 10 Avril 1825, et aux Articles 84 et 85 du

Code Pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'Article 21 du Code Napoléon, et des Articles 65 et suivants du Décret du 24 Mars 1852, sur la marine marchande, 313 et suivants du Code Pénal pour l'armée de mer.

Sa Majesté déclare, en outre, que tout Français qui

ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérents pourraient exercer ou décréter.

(Signé) NAPOLÉON.

Le Ministre des Affaires Etrangères,  
(Signé) E. Thouvenel.

#### PRUSSIA.

THE Minister of Commerce issued the notification annexed to the mercantile classes in the Baltic ports :

" It is my duty to make known to you that during the continuance of the conflict that has broken out among the North American States, the mercantile classes must abstain from all enterprises which are forbidden by the general principles of international law, and especially by the Ordinance of the 12th of June 1856, which has relation to the Declaration of the 12th of April 1856, upon the principles of

maritime law. Moreover, I will not omit to make especially noticeable by you that the Royal Government will not permit to its shipping or its subjects, which may mix up in these conflicts by taking letters of marque, sharing in privateering enterprises, carrying merchandise contraband of war, or forwarding despatches, to have the benefit of its protection against any losses which may befall them through such transactions.

" The equipment of privateers in the ports of this country is forbidden by the laws of the land, as is known to the mercantile community."

#### BELGIUM.

(Translation.)

BELGIUM has given its adhesion to the principles laid down in the Declaration of the Congress of Paris of April 16, 1856. This adhesion was published, together with the said Declaration (6th June 1856) in the Belgian "Moniteur" of June 8, 1856.

The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea.

The aforesaid authorities are charged, consequently, to keep a strict watch upon all such privateers and their prizes, and to compel them to put to sea again as soon as practicable.

The same authorities have been charged not to recognize the validity of any commission or letter of marque whatsoever.

All persons subject to the laws of Belgium, who shall fit out or take any part in any privateering expedition, will therefore expose themselves to the danger, on the one hand, of being treated as pirates abroad, and, on the other, to prosecution before Belgian tribunals with all the rigour of the laws.

#### RUSSIA.

*To the Commander-in-chief of the Port of Cronstadt.*

His Imperial Highness the General Admiral, foreseeing the possibility of ships belonging to the Southern States of the American Union, which have seceded from the United States of North America, arriving at our ports during the present navigation, has directed me to inform your Excellency, for your guidance, that, according to the opinion of the Minister of Foreign Affairs, the flag of men-of-war belonging to the seceded States must not be saluted.

That there may be no obstacle in the way of commerce, merchant-vessels of the seceded States are to be treated according to the rules acted on by us with regard to Italian merchant-vessels sailing under the Italian flag, i.e., according to the Treaties that are at present in force (Commercial Treaty concluded between America and us, December 1<sup>st</sup>, 1832).

Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of the Consuls appointed by the Federal Government of Washington, then in case of dispute they must abide by the decision of our local authorities, in the same

manner as foreigners whose Governments have no Representatives in our Empire.

(Signed) General-Major GREIG.

*Director of the Chancellery of the Minister of Marine.*

*Circular addressed to the Custom-Houses on the White, Baltic, Black, and Azoff Seas.*

By order of the Minister of Finance, the Department of Foreign Trade prescribes :—In case any merchant-vessels arrive in our ports belonging to the Southern States of the American Union, the same not acknowledging the authority of the Government of the United States of America, the said vessels are to be treated and received as hitherto, according to the Treaty of 1832, should even their ships' papers not be in order, which may occur in consequence of the present political condition of the United States of America.

(Signed) General-Lieutenant PASHKOFF,  
*Director of the Department of Foreign Trade.*  
SORNIN, Chief of Section, &c.

#### NETHERLANDS.

(Translation.)

*At the Hague.*

In obedience to the King's orders the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag soever, or provided with

any commission or letters of marque, or their prizes, shall be admitted into our havens or seaports, unless in case of marine disaster, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

The Ministers above named.



(Translation.)

*The Hague.*

THE Minister for Foreign Affairs and the Minister of Justice, by the King's authority, warn, by these presents, all inhabitants of the kingdom, that during the existing disturbances in the United States of America they in nowise take part in privateering, because the Netherlands Government has acceded to the Declaration upon maritime rights set forth by the Paris Conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions got for letters of marque permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may issue to inhabitants of the Netherlands, cannot have a lawful effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the Kingdom. Those who, under such circumstances, engage in or lend their aid in privateering to other people, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offences.

The Ministers above named.

(Translation.)

*The Hague, June 1861.*

THE Minister for Foreign Affairs, apprised by a communication from the Minister of Marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate "Zealand," and the screw-propellers "Dyambi" and "Vesuvius," for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, therefore esteems it to be his duty to direct the attention of shipmasters, consignees, and freighters, to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral Powers to respect actual blockades, and not to carry contraband of war, or despatches of belligerents.

In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's Government. Of which take notice.

The Minister above named.

## PORTUGAL.

(Translation.)

*Palace of Necessidades, July 29, 1861.*

It being proper, in view of the circumstances at present existing in regard to the United States of America, to carry into effect the principles established in the Declaration of Paris of April 16, 1856, made by the representatives of the powers that signed the Treaty of Peace of the 30th of March of that year, to which declaration my Government acceded, and likewise, for the same reason, to adopt other measures which I deem opportune, I have been pleased after hearing the Council of State, to decree as follows:

Article 1. In all the ports and waters of this Kingdom, as well on the continent and in the adjacent islands as in the ultramarine provinces, Portuguese subjects and foreigners are prohibited from fitting out vessels destined for privateering.

Article 2. In the same ports and waters referred to in the preceding article is, in like matter, prohibited

the entrance of privateers and of the prizes made by privateers, or by armed vessels.

The cases of overruling necessity (*força maior*), in which, according to the law of nations, hospitality is indispensable, are excepted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.

The Ministers and Secretaries of State in all the departments will thus understand, and cause it to be executed.

(Signed) KING.

(Countersigned)

MARQUEZ DE LOULE.

ALBERTO ANTONIO DE MORAES CARVALHO.

VISCONDE DE SA DA BANDEIRA.

CARLOS BENTO DA SILVA,

THIAGO AUGUSTO VELLOSO DE HORTA.

ANTONIO JOSE D'AVILA.

## HAWAIIAN ISLANDS.

PROCLAMATION of the King of the Hawaiian Islands declaring the neutrality of the Hawaiian Islands in the war between the United States and the so-called Confederate States.

*Kailua, August 26, 1861.*

BE it known to all whom it may concern that we, Kamehameha IV., King of the Hawaiian Islands, having been officially notified that hostilities are now unhappily pending between the Government of the United States and certain States thereof, styling themselves "the Confederate States of America," hereby proclaim our neutrality between the said contending parties.

That our neutrality is to be respected to the full extent of our jurisdiction, and that all captures and seizures made within the same are unlawful, and in violation of our rights as a Sovereign.

And be it further known that we hereby strictly prohibit all our subjects, and all who reside or may be within our jurisdiction, from engaging either directly or indirectly in privateering against the shipping or commerce of either of the contending parties, or of rendering any aid to such enterprises whatever; and

all persons so offending will be liable to the penalties imposed by the laws of nations, as well as by the laws of said States, and they will in no wise obtain any protection from us as against any penal consequences which they may incur.

Be it further known that no adjudication of prizes will be entertained within our jurisdiction, nor will the sale of goods or other property belonging to prizes be allowed.

Be it further known that the rights of asylum are not extended to the privateers or their prizes of either of the contending parties, excepting only in cases of distress or of compulsory delay by stress of weather or dangers of the sea, or in such cases as may be regulated by treaty stipulation.

Given at our marine residence of Kailua, this 26th day of August, A.D. 1861, and the seventh of our reign.

By the King,

(Signed) KAMEHAMEHA.

By the King and Kuhina Nui,

KAAHUMANU.

B. C. WYLLIE.



## BREMEN.

*Ordinance of Senate against Privateering.*  
(Translation.)

(Published July 4, 1861.)

THE Senate finds it necessary, in regard to the events which have occurred in North America, to renew the regulations contained in its Ordinance of April 29, 1854, and accordingly makes the following notification for general observance :—

1. All subjects of the State of Bremen are forbidden, under severe penalties, both from meddling in any way with privateering and from taking part therein,

either by fitting out privateers themselves, or contributing through others to the same.

2. The proper officers are ordered not on any account to allow the fitting out or provisioning of privateers, under whatever flag or carrying whatever letters of marque, in any port of the Bremen territory, nor to admit into a Bremen port any such privateers, or the prizes made by them, except in cases of proved stress of weather at sea.

Resolved at Bremen, in the Assembly of the Senate, on the 2nd, and published on the 4th of July 1861.

## HAMBURG.

*Ordinance against Privateering.*

(Translation.)

On the occasion of the events which have taken place in the United States of North America, the Senate reminds the public that, according to the notification of July 7, 1856, relative to the Declaration of the Congress of Paris on the application of maritime law in time of war, privateering is entirely abolished, and therefore it is prohibited to engage in any way in

privateering, or to take part in it either in fitting out privateers or by assisting others to do so. The proper orders have also been issued not to allow in Hamburg ports the fitting out or provisioning of privateers, under whatever flag or furnished with whatever letters of marque, and not to admit into Hamburg ports or roadsteads any such privateers, with or without prizes, except in cases of proved stress of weather at sea.

Given in the Assembly of the Senate, Hamburg, July 19, 1861.

## APPENDIX No. V.

## BRITISH PROCLAMATIONS OF NEUTRALITY.

## I.—SPAIN AND SPANISH AMERICA.

A PROCLAMATION prohibiting His Majesty's natural-born Subjects from serving, or enlisting, or entering themselves to serve in the military forces or ships of war, raised or set forth by the persons exercising or assuming to exercise the Powers of Government in certain Provinces, and Parts of Provinces in Spanish America, or in the Military Forces of His Catholic Majesty employed in Spanish America, or in His said Majesty's Ships of War, 27th November 1817.

GEORGE, P.R.

WHEREAS, there unhappily subsists a state of warfare between His Catholic Majesty, and divers provinces, or parts of provinces in Spanish America: And whereas it has been represented to us that many of our subjects have, without our leave or licence, enlisted or entered themselves to serve in the military forces, or ships of war raised or set forth by the persons exercising, or assuming to exercise the Powers of Government in such provinces or parts of provinces, and that divers others of our subjects are about, in like manner, to enter and enlist themselves; and whereas such practices are highly prejudicial to, and tend to the peace and welfare of our Crown and Dominions; we do therefore hereby, by and with the advice of our Privy Council, strictly charge and command all and every of our natural-born subjects, of what degree or quality soever, not to serve in any such military forces or ships of war as aforesaid, and not to enlist or enter themselves to serve therein, and not to go beyond the seas, or embark in order to serve, or with

intent to enter or enlist themselves to serve in such military forces or ships of war; and it is, at the same time our royal will and pleasure, and we do by and with the advice aforesaid, hereby also strictly charge and command all and every of our said subjects not to serve or enlist, or enter themselves to serve, in any of the military forces or ships of war raised or set forth, or to be raised or set forth by His Catholic Majesty, and not to go beyond the seas, or embark, in order or to the intent to serve, or enter, or enlist themselves to serve in any such military forces or ships of war; it is, nevertheless, our royal will and pleasure, that nothing herein contained shall be deemed or taken to prohibit any of our subjects who are engaged at the time of the date of this our proclamation, in serving in the military forces of His Catholic Majesty, with our leave or licence from continuing to serve therein, provided that such our said subjects do not serve with the military forces of His Catholic Majesty, when employed in Spanish America; and we do hereby, by and with the advice aforesaid, strictly require all our said subjects duly to conform to our commands herein contained, under pain of our highest displeasure, and the utmost forfeitures, penalties, and punishments, to which by law they will otherwise be liable.

Given at our Court at Brighton, the 27th day of November 1817, in the 58th year of His Majesty's reign.

GOD SAVE THE KING.

## II.

BRITISH PROCLAMATION for putting in execution the law made to prevent the enlisting or engagement of His Majesty's subjects in Foreign Service, and the fitting out or equipping in His Majesty's dominions vessels for warlike purposes without His Majesty's licence, 6th June 1823.

GEORGE R.

WHEREAS hostilities at this time exist between different states and countries in Europe and America, and it His Majesty's determination to observe the strictest neutrality with respect to the states and countries engaged in such hostilities: And whereas His Majesty has been informed that attempts have been made to induce His Majesty's subjects to engage in such hostilities, by entering into the military and naval service of some of the states and countries without His Majesty's leave or licence.

And whereas by an Act, made and passed in the 59th year of the reign of His late Majesty of blessed memory, intituled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's licence."

It is, amongst other things, enacted "that if any natural-born subject of His Majesty," &c. (Second clause of the Foreign Enlistment Act).

And it is further enacted "that it shall and may be lawful for any Justice of the Peace \* \* \* according to law for the said offence." (First paragraph of the third clause of the Foreign Enlistment Act.)

And it is further enacted "that in case any ship or vessel," &c. (Fifth clause of the Foreign Enlistment Act.)

And it is further enacted "that if any master or person," &c. (Sixth clause of the Foreign Enlistment Act.)

And it is further enacted "that if any person within any part of the United Kingdom," &c. (Seventh clause of the Foreign Enlistment Act.)

And it is further enacted "that if any person in any part of the United Kingdom, &c. (Eighth clause of the Foreign Enlistment Act.)

His Majesty, therefore, being resolved to cause the provisions of the said statute to be effectually put in execution, and being desirous that none of His Majesty's subjects should unwarily subject themselves to the penalties thereby inflicted, hath thought fit, by and with the advice of His Privy Council, to issue this His Royal Proclamation, and doth hereby strictly command that no person or persons whatsoever do presume to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, and the tone, intent, and meaning thereof, and that the said provisions of the said statute be punctually observed and kept, upon pain of the several penalties by the said statute inflicted upon offenders against the same, and of His Majesty's high displeasure.

Given at our Court at Carleton House this 6th day of June 1823 and in the fourth year of Our reign.

GOD SAVE THE KING.

## III.—GREECE AND TURKEY.

(30 September 1825.)

GEORGE R.

WHEREAS, His Majesty being at peace with all the Powers and States of Europe and America, has repeatedly declared His royal determination to maintain a strict and impartial neutrality in the different contests, in which certain of these powers and states are engaged.

And whereas the commission of acts of hostility by individual subjects of His Majesty against any Power or State, or against the persons and properties of the subjects of any Power or State, which being at peace with His Majesty is at the same time engaged in a contest, with respect to which His Majesty has declared His determination to be neutral, is calculated to bring into question the sincerity of His Majesty's declaration:

And whereas if His Majesty's subjects cannot be effectually restrained from such unwarranted commission of acts of hostility, it may be justly apprehended that the Governments aggrieved thereby might be unable, on their part, to restrain their subjects from committing acts of violence upon the persons and property of unoffending subjects of His Majesty:

And whereas the Ottoman Porte, a Power at peace with His Majesty, is and has been for some years past engaged in a contest with the Greeks, in which contest His Majesty has observed a strict and impartial neutrality:

And whereas great numbers of His Majesty's loyal subjects reside and carry on a beneficial commerce, and possess establishments, and enjoy privileges within the dominions of the Ottoman Porte, protected by the faith of treaties between His Majesty and that Power:

And whereas His Majesty has received recent and undoubted information that attempts are now making to induce certain of His Majesty's subjects to fit out ships of war and privateers in the ports of His Majesty's Kingdom, and to embark therein, for the purpose of carrying on, under the Greek flag, hostile operations against the Ottoman Government, of capturing and destroying Turkish ships and property, and of committing depredations on the coasts of the Turkish dominions:

And whereas such hostile operations would be directly contrary to the provisions of the Act passed in the 59th year of the reign of His late Majesty (cap. 63.) intituled "An Act to prevent the enlisting, or engagement of His Majesty's subjects to serve in foreign service, and the fitting-out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's licence," in which it is amongst other things enacted, "That if any natural-born subject, &c.," (2nd clause of the Foreign Enlistment Act):

And it is further enacted, "That if any person, &c." (7th clause of the Foreign Enlistment Act).

His Majesty, therefore, being desirous of preserving to His subjects the blessings of peace which they now happily enjoy, and being resolved to persevere in that system of neutrality which His Majesty has so repeatedly declared his determination to maintain; in order that none of His Majesty's subjects may unwarily render themselves liable to the penalties imposed by the Statute herein mentioned, has thought fit, by and with the advice of His Privy Council, to issue this His Royal Proclamation.

And His Majesty does hereby strictly command that no person or persons whatsoever do presume to take part in any of the said contests, or to commit or attempt any act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of His Majesty's high displeasure.

And His Majesty, by and with the advice aforesaid, doth hereby enjoin all His Majesty's subjects strictly to observe, as well towards the Ottoman Porte and the Greeks, as towards all other belligerents with whom His Majesty is at peace, the duties of neutrality, and to respect in all and each of them the exercise of those belligerent rights which His Majesty has always claimed to exercise when His Majesty has himself been unhappily engaged in war.

Given at our Court at Windsor, the 30th day of September 1825, and in the 6th year of our reign.

GOD SAVE THE KING.

## IV.—AUSTRIA, FRANCE, AND SARDINIA.

(May 13, 1859).

## BY THE QUEEN.—A PROCLAMATION.

VICTORIA R.

WHEREAS we are happily at peace with all Sovereigns, Powers, and States:

And whereas, notwithstanding our utmost exertions to preserve peace between all the Sovereign Powers and States now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria on the one part and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part:

And whereas a state of war now exists between His Imperial Majesty the Emperor of Austria on the one part and His Majesty the King of Sardinia and His Imperial Majesty the Emperor of the French on the other part, and between their respective subjects and others inhabiting within their countries, territories, or dominions:

And whereas we are on terms of friendship and amicable intercourse with all and each of these Sovereigns, and with their several subjects, and others, inhabiting within their countries, territories, or dominions:

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid Sovereigns, protected by the faith of Treaties between us and each of the aforesaid Sovereigns:

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said Sovereigns, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects, and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them:

We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation.

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the 59th year of His Majesty King George III. [cap. 69], entitled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping,

"in His Majesty's dominions, vessels for warlike purposes without His Majesty's licence," it is amongst other things declared and enacted as follows: "That if any person within any part of the United Kingdom," &c., (7th clause of the Foreign Enlistment Act).

And it is in and by the said Act further enacted "That if any person in any part of the United Kingdom," &c. (8th clause of the Foreign Enlistment Act).

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe towards each and all of the aforesaid Sovereigns, their subjects and territories, and towards all belligerents whatsoever with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which we and our royal predecessors have always claimed to exercise.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign, in a war between other Sovereigns, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of any or either of the said Sovereigns, by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered, and deemed to be, contraband of war, according to the law or modern usages of nations, for the use or service of any or either of the said Sovereigns, that all persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture, and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice, that all our subjects and persons entitled to our protection who may misconduct themselves in the premises, will do so at their peril, and of their own wrong; and that they will in no wise obtain any protection from us against such capture, or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at Buckingham Palace this 13th day of May in the year of our Lord 1859, and in the 22d year of our reign.

GOD SAVE THE QUEEN.

## V.—UNITED STATES.

May 13, 1861.

## BY THE QUEEN.—A PROCLAMATION.

VICTORIA R.

WHEREAS we are happily at peace with all Sovereigns, Powers, and States:

And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America:

And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties:

We therefore have thought fit, by and with the advice of our privy council, to issue this our royal proclamation:

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III., intituled "An Act to prevent the

"enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence," it is amongst other things declared and enacted as follows:—

"That if any natural-born subject of His Majesty, &c., (2nd Clause of the Foreign Enlistment Act)."

And it is in and by the said Act further enacted,—

"That if any person within any part of the United Kingdom, &c., (7th Clause of the Foreign Enlistment Act)."

And it is in and by the said Act further enacted,—

"That if any person in any part of the United Kingdom, &c., (8th Clause of the Foreign Enlistment Act)."

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command, that no person or persons whatsoever do commit any Act, matter, or thing whatsoever, contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our royal proclamation, and of our high displeasure, to do any acts in derogation of their duty, as subjects of a neutral sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any

ship or vessel of war or transport of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said statute or by the law of nations in that behalf imposed or denounced.

And we do hereby declare, that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at the White Lodge, Richmond Park, this Thirteenth day of May, in the year of our Lord, One thousand eight hundred and sixty-one, and in the Twenty-fourth year of our reign.

GOD SAVE THE QUEEN.

## VI.—SPAIN AND CHILI.

(6th February 1866.)

### BY THE QUEEN—A PROCLAMATION.

#### VICTORIA.

WHEREAS we are happily at peace with all sovereigns, powers, and states:

And whereas hostilities have unhappily commenced between the Government of Spain and the Government of the Republic of Chili:

And whereas we, being at peace with both the said Governments, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties:

We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation:

And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas, in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the III., intituled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence," it is, amongst other things, declared and enacted as follows:

"That if any natural-born subject of His Majesty, &c., (2nd Clause of the Foreign Enlistment Act)."

And it is in and by the said Act further enacted:

"That if any person within any part of the United Kingdom, &c., (7th Clause of the Foreign Enlistment Act)."

And it is in and by the said Act further enacted:

"That if any person in any part of the United Kingdom, &c., (8th Clause of the Foreign Enlistment Act)."

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever, contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of our high displeasure.

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty, as subjects of a neutral Sovereign, in the said contest, or in violation or contravention of the law of nations in that behalf, as for example and more especially by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport, of or in the service of either of the said contending parties, or by serving as officers, sailors, or marines on board any privateers bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas, with intent to enlist or engage in any such service; or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport, by either of the said contending parties; or by breaking, or endeavouring to break, any blockade lawfully and actually established

by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said Statute, or by the law of nations in that behalf imposed or denounced.

And we do hereby declare that all our subjects, and

persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril, and of their own wrong, and that they will in no wise obtain any protection from us against any abilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our Court at Osborne House, Isle of Wight, this third day of February in the year of our Lord one thousand eight hundred and sixty-six, and in the twenty-ninth year of our reign.

GOD SAVE THE QUEEN.

## VII.—SPAIN AND PERU.

13th March 1866.

The same as the preceding (Spain and Chili) *mutatis mutandis*.

## VIII.—AUSTRIA, PRUSSIA, ITALY, GERMANY.

BY THE QUEEN.—A PROCLAMATION.

VICTORIA R.

WHEREAS we are happily at peace with all sovereigns, powers, and states:

And whereas, notwithstanding our utmost exertions to preserve peace between all the sovereign powers and states now at war, hostilities have unhappily commenced between His Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation:

And whereas a state of war now exists between His Imperial Majesty the Emperor of Austria, His Majesty the King of Prussia, His Majesty the King of Italy, and the Germanic Confederation, and between their respective subjects and others inhabiting within their countries, territories, or dominions:

And whereas we are on terms of friendship and amicable intercourse with all and each of these sovereigns, and with the Germanic Confederation, and with their several subjects and others inhabiting within their countries, territories, or dominions:

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid sovereigns and states, protected by the faith of treaties between us and each of the aforesaid sovereigns and states:

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said sovereigns and states, their subjects and territories, and to remain at peace with and to maintain a peaceful and friendly intercourse with all and with each of them, and their respective subjects and others inhabiting within any of their countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said hostilities and war unhappily existing between them:

We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation:

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid hostilities and war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas, in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the Third, entitled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping in His Majesty's dominions, vessels for

"warlike purposes, without His Majesty's licence," it is amongst other things declared and enacted as follows:—"That if any person within any part of the United Kingdom, &c.," (7th clause of the Foreign Enlistment Act.)

And it is in and by the said Act further enacted, "That if any person in any part of the United Kingdom, &c.," (8th clause of the Foreign Enlistment Act).

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon pain of the several penalties by the said statute imposed, and of our high displeasure:

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe towards each and all of the aforesaid sovereigns and states, their subjects and territories, and towards all belligerents whatsoever, with whom we are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which we and our Royal predecessors have always claimed to exercise:

And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation and of our high displeasure, to do any Acts in derogation of their duty as subjects of a neutral sovereign in a war between other sovereigns and states, or in violation or contravention of the law of nations in that behalf, as more especially by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of any or either of the said sovereigns and states, by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usages of nations, for the use or service of any or either of the said sovereigns and states, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture, and to the penalties denounced by the law of nations in that behalf:

And we do hereby give notice, that all our subjects and persons entitled to our protection who may misconduct themselves in the premises will do so at their peril and of their own wrong; and that they will in nowise obtain any protection from us against such capture or such penalties as aforesaid, but will, on the contrary, incur our high displeasure by such misconduct.

Given at our court at Windsor, this twenty-seventh day of June in the year of our Lord one thousand eight hundred and sixty-six, and in the thirtieth year of our reign.

GOD SAVE THE QUEEN.

## APPENDIX No. VI.

## REGULATIONS AND INSTRUCTIONS PUBLISHED BY HER MAJESTY'S GOVERNMENT DURING THE CIVIL WAR IN THE UNITED STATES, 1861-65.

LETTER from the Foreign Office to the Admiralty, Colonial, War, and India Offices, interdicting ARMED CRUIZERS and PRIVATEERS, whether of the United States of North America, or the so-styled Confederate States, from carrying PRIZES into BRITISH PORTS; 1 June 1861.

MY LORDS, Foreign Office, 1 June 1861.

HER Majesty's Government are, as you are aware, desirous of observing the strictest neutrality in the contest which appears to be imminent between the United States and the so-styled Confederate States of North America; and with the view more effectually to carry out this principle they propose to interdict the armed ships, and also the privateers of both parties, from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's colonies or possessions abroad.

I have accordingly to acquaint your Lordships that the Queen has been pleased to direct, that orders in conformity with the principles above stated should forthwith be addressed to all proper authorities in the United Kingdom and to Her Majesty's naval or other authorities in all quarters beyond the United Kingdom, for their guidance in the circumstances.

I have, &c.

The Lords Commissioners (Signed) J. RUSSELL  
of the Admiralty.

NOTE.—A similar letter was addressed on the same day to each of the Secretaries of State for India, War, and the Colonies.

2.—Extract from the "London Gazette" of the  
15th December 1863.

LETTER from EARL RUSSELL to the LORDS COMMISSIONERS of the ADMIRALTY, and DESPATCH from the DUKE OF NEWCASTLE to the GOVERNOR of the BAHAMAS:

MY LORDS, Foreign Office, January 31, 1862.

HER MAJESTY being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves "the Confederate States of America," and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's Orders and Directions.

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas, six days after the day when the Governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," or until Her Majesty shall otherwise order, no ship of war, or privateer belonging to either of the belligerents, shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of

stress of weather. If any such vessel should enter any such port, roadstead, or waters, by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those Islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there shall then be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship), shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty, respectively enter any port, roadstead, or waters belonging to Her Majesty either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters, for a longer period



than twenty-four hours after her necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant ships,) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant ship), of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times, hereby limited, for the departure of such ships of war and privateers respectively, shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer, in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

I have &c.,  
(Signed) RUSSELL.

*Note.*—A similar letter has been addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

Downing Street,  
October 6, 1863.

SIR,  
DOUBTS having been expressed as to whether under the regulations of the 31st January 1862, which were embodied in a proclamation issued by you on the 11th March following, it is required that the Commander of a belligerent ship of war or privateer should obtain the permission of the local authorities before entering the ports, roadsteads, or waters of the Bahamas out-islands, when the Governor is not there present, I am to acquaint you that Earl Russell has taken Her Majesty's pleasure thereupon, and you are to understand that at the ports of the out-islands, as at Nassau, the special leave of the Governor himself is required (unless in stress of weather), by any belligerent vessel desiring to enter, with this exception only, that in cases of grave emergency and real necessity and distress, such as a sailing vessel being dismasted, or accident happening to the machinery of a steam-vessel, the vessel may enter the ports, roadsteads, or waters on obtaining leave from a resident officer, to whom the Governor shall have delegated his authority in that behalf.

With a view to give effect to Her Majesty's intentions, you will be pleased to convey to the officers in the out-islands to whom it may best be confided, the authority in question, taking care to communicate to them copies of the regulations of the 31st January 1862, and calling their especial attention to the limits of the authority delegated, and to that clause of the regulations of 31st January 1862 in which it is directed that vessels entering under stress of weather, or by special leave, shall be required to put to sea as soon as possible.

I have, &c.,  
(Signed) NEWCASTLE.

Governor Bayley, C.B.,  
&c., &c., &c.

RETURN to an ADDRESS of the Honourable the HOUSE of COMMONS, dated 3 June 1864, for "COPY of any Additional INSTRUCTIONS to COLONIAL GOVERNORS on the subject of BELLIGERENT CRUIZERS."

Colonial Office,

6 June 1864.

FREDERICK ROGERS.

CIRCULAR INSTRUCTIONS to Governors of Colonies respecting the Treatment of Prizes Captured by Federal or Confederate Cruisers if brought into British Waters.

SIR, Downing-street, 2d June 1864.

I THINK it well to communicate to you the decisions at which Her Majesty's Government have arrived on certain questions which have arisen respecting the treatment of prizes captured by Federal or Confederate cruisers if brought into British waters.

1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the Governor to the captors immediately to depart and remove such prize.

2. A vessel which shall have been actually and *bona fide* converted into, and used as a public vessel of war, shall not be deemed to be a prize within the meaning of these rules.

3. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather, or other extreme and unavoidable necessity, the Governor may allow for her removal such time as he may consider to be necessary.

4. If any prize shall not be removed at the time prescribed to the captors by the Governor, the Governor may detain such prize until Her Majesty's pleasure shall be made known.

5. If any prize shall have been captured by any violation of the territory or territorial waters of Her Majesty, the Governor may detain such prize until Her Majesty's pleasure shall be made known.

Her Majesty's Government have not thought it necessary to make any addition to the instructions already given with respect to cargoes, viz., that Her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

These rules are for the guidance of the Executive authority, and are not intended to interfere in any way with the process of any court of justice.

I have, &c.,  
(Signed) EDWARD CARDWELL.

"London Gazette," September 9, 1864.

Foreign Office, September 8, 1864.

It is hereby notified that Her Majesty has been pleased to order that for the future no ship of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain, or be, in any of Her Majesty's Ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's Colonies and foreign possessions, to see that this order is properly carried into effect.

Extract from the "London Gazette" of May 19, 1865.

LETTER from Earl Russell to the LORDS COMMISSIONERS of the ADMIRALTY:—

Foreign Office,  
My Lords, May 11, 1865.

I HAVE the honour to acquaint you that, in the existing state of the civil war in America, and the uncertainty which may be felt as to its continuance, it



appears to Her Majesty's Government that the time has arrived for ceasing to enforce so much of the orders which, in pursuance of my letter of the 31st of January 1862, were issued by the several departments of Her Majesty's Government, as empowered the authorities of any port belonging to Her Majesty, either in the United Kingdom or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, to require any ship of war or privateer of either belligerent which might enter any port, roadstead, or waters belonging to Her Majesty, in order to obtain provisions or things necessary for the subsistence of her crew, or to effect repairs, to put to sea as soon as possible after the expiration of a period of twenty-four hours, without permitting her to take in supplies beyond what might be necessary for her immediate use; and not to suffer any such vessel as might have been allowed to remain within British waters for the purpose of repair to continue in any port, roadstead, or waters belonging to Her Majesty for a longer period than twenty-four hours after her necessary repairs should have been completed; and also so much of the same orders as limited the quantity of coal and the period within which it might be obtained, to be embarked on board any such ship of war or privateer of either belligerent.

I have addressed a similar letter to the Secretaries of State for the Home, Colonial, War, and India Departments and to the Lords Commissioners of Her Majesty's Treasury.

(Signed) RUSSELL.

*Note.*—A similar letter has been addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

Extract from the "London Gazette" of June 6, 1865.  
LETTER FROM EARL RUSSELL to the LORDS COMMISSIONERS of the ADMIRALTY.

MY LORDS, Foreign Office, June 2, 1865.

I HAVE the honour to state to your Lordships that since the date of my letter of the 11th ultimo intelligence has reached this country that the late President of the so-called Confederate States has been captured by the military forces of the United States, and has been transported as a prisoner to Fort Monroe, and that the armies hitherto kept in the field by the Confederate States have for the most part surrendered or dispersed.

In this posture of affairs Her Majesty's Government are of opinion that neutral nations cannot but consider the civil war in North America as at an end.

In conformity with this opinion Her Majesty's Government recognize that peace has been restored within the whole territory of which the United States of North America before the commencement of the civil war were in undisturbed possession.

As a necessary consequence of such recognition on the part of Her Majesty's Government, Her Majesty's several authorities in all ports, harbours, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, must henceforth refuse permission to any vessel of war carrying a Confederate flag to enter any such ports, harbours, and waters; and must require any Confederate vessels of war which, at the time when these orders reach Her Majesty's authorities in such ports, harbours, and waters may have already entered therein on the faith of Proclamations heretofore issued by Her Majesty, and which, having complied with the provisions of such Proclamations, may be actually within such ports, harbours, and waters, forthwith to depart from them.

But Her Majesty's Government consider that a due regard for national good faith and honour requires that Her Majesty's authorities should be instructed, as regards any such Confederate vessels so departing, that they should have the benefit of the prohibition heretofore enforced against pursuit of them within twenty-four hours by a cruiser of the United States lying at the time within any such ports, harbours, and waters, and that such prohibition should be then and for the last time maintained in their favour.

If, however, the Commander of any Confederate vessel of war which may be found in any port, harbour, or waters of Her Majesty's dominions at the time these new orders are received by Her Majesty's authorities, or may enter such port, harbour, or waters, within a month after these new orders are received, should wish to divest his vessel of her warlike character, and, after disarming her, to remain without a Confederate flag within British waters, Her Majesty's authorities may allow the Commander of such vessel to do so at his own risk in all respects, in which case he should be distinctly apprised that he is to expect no further protection from Her Majesty's Government, except such as he may be entitled to in the ordinary course of the administration of the law in time of peace.

The rule as to twenty-four hours would of course not be applicable to the case of such vessel.

I have addressed a similar letter to the Secretaries of State for the Home, Colonial, India, and War Offices, and also to the Lords Commissioners of Her Majesty's Treasury, requesting them, as I do your Lordships, to issue instructions in conformity with the decision of Her Majesty's Government to the several British authorities at home or abroad who may be called upon to act in the matter.

I am, &c.

(Signed) RUSSELL.

*Note.*—A similar letter was addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

## APPENDIX No. VII.

RETURN to an Address of the Honourable the House of Commons, dated July 8, 1863; for "Copy of a  
" Memorial from certain Shipowners of Liverpool to the Secretary of State for Foreign Affairs, suggesting  
" an Alteration in the Foreign Enlistment Act."

No. 1.

Memorial.

To the Right Honourable the Earl Russell, Her Majesty's Principal Secretary of State for the Foreign Department.

The Memorial of the undersigned shipowners of Liverpool,

SHEWETH,

THAT your memorialists who are deeply interested in British shipping, view with dismay the probable future consequences of a state of affairs which permits a foreign belligerent to construct in and send to sea

from British ports vessels of war, in contravention of the provisions of the existing law.

That the immediate effect of placing at the disposal of that foreign belligerent a very small number of steam-cruisers has been to paralyze the mercantile marine of a powerful maritime and naval nation, inflicting within a few months losses, direct and indirect, on its shipowning and mercantile interests which years of peace may prove inadequate to retrieve.

That your memorialists cannot shut their eyes to the probability that in any future war between England and a foreign Power, however insignificant in naval strength, the example now set by subjects of

Her Majesty while England is neutral may be followed by citizens of other countries, neutral when England is belligerent; and that the attitude of helplessness in which Her Majesty's Government have declared their inability to detect and punish breaches of the law notoriously committed by certain of Her Majesty's subjects, may hereafter be successfully imitated by the Governments of those other countries in answer to English remonstrances.

That the experience of late events has proved to the conviction of your memorialists that the possession by a belligerent of swift steam-cruizers, under no necessity, actual or conventional, to visit the possibly blockaded home ports of that belligerent, but able to obtain all requisite supplies from neutrals, will become a weapon of offence against which no preponderance of naval strength can effectually guard, and the severity of which will be felt in the ratio of the shipping and mercantile wealth of the nation against whose mercantile marine the efforts of those steam-cruizers may be directed.

That the effect of future war with any Power thus enabled to purchase, prepare, and refit vessels of war in neutral ports will inevitably be to transfer to neutral flags that portion of the sea-carrying trade of the world which is now enjoyed by your memorialists and by other British shipowners.

That over and above the chances of pecuniary loss to themselves, your memorialists share in the regret with which a law-regarding community must naturally look on successful attempts to evade the provisions of an Act of Parliament passed for a single and simple purpose, but which has been found not to give the Executive all the powers needed for its effective execution.

That your memorialists would accordingly respectfully urge upon your lordship the expediency of proposing to Parliament to sanction the introduction of such amendments into the Foreign Enlistment Act as may have the effect of giving greater power to the Executive to prevent the construction in British ports of ships destined for the use of belligerents.

And your memorialists would further suggest to your lordship the importance of endeavouring to secure the assent of the Governments of the United States of America and of other foreign countries to

the adoption of similar regulations in those countries also.

All which your memorialists respectfully submit.

(Signed)

Lamport & Holt.	James Brown & Co.
James Baines & Co.	James Poole & Co.
Richard Nicholson & Son.	W. Jacob & Co.
W. B. Boadle.	Henry Moore & Co.
J. Prowse & Co.	Imrie & Tomlinson.
Currie, Newton, & Co.	Thomas Chilton.
Nelson, Alexander, & Co.	Jones, Palmer, & Co.
Kendall Brown.	Farnworth & Jardine.
G. S. H. Fletcher & Co.	Thomas & James Harrison.
J. Aikin.	L. H. Macintyre.
Finlay, Campbell, & Co.	Potter, Brothers.
Cropper, Ferguson, & Co.	Chas. Geo. Cowie & Co.
J. Campbell.	W. J. Seally.
S. R. Graves.	R. Girvin & Co.
Rankin, Gilmour, & Co.	C. T. Bowring & Co.
Rathbone, Bros. & Co.	

Liverpool, June 9, 1863.

No. 2.

Mr. Hammond to Messrs. Lamport & Holt, and others.

GENTLEMEN, Foreign Office, July 6, 1863.

I AM directed by Earl Russell to acknowledge the receipt of the memorial dated the 9th of June, signed by you and others of the merchants at Liverpool, in which you urge upon his Lordship the expediency of proposing to Parliament such amendments to the Foreign Enlistment Act as shall enable the Government to prevent the construction in British ports of ships destined for the use of belligerents.

I am to state to you in reply, that in Lord Russell's opinion the Foreign Enlistment Act is effectual for all reasonable purposes, and to the full extent to which international law or comity can require, provided proof can be obtained of any act done with the intent to violate it.

Even if the provisions of the Act were extended, it would still be necessary that such proof should be obtained, because no law could or should be passed to punish upon suspicion instead of upon proof.

I am, &c.

(Signed) E. HAMMOND.

LONDON:

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For Her Majesty's Stationery Office.







REPORT

THE NEUTRALITY LAWS, CONSIDERED

AS APPLIED TO

REPORTS FROM FOREIGN STATES AND OFFICE DOCUMENTS

PREPARED BY THE DEPARTMENT OF COMMERCE, BUREAU OF COMMERCE, AT THE



WASHINGTON

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1914









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